



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2004

Ms. Jill Torbert
Assistant County Attorney
Bexar County
300 Dolorosa, 5th Floor
San Antonio, Texas 78205-3030

OR2004-2821

Dear Ms. Torbert:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "PIA"), chapter 552 of the Government Code. Your request was assigned ID# 198945.

The Bexar County Sheriff's Office (the "Sheriff's Office") received a request for "copies of all documents (including witness statements, letters memoranda, and reports) relating to the investigation into criminal allegations of David Harris (Case # 03-4057)." You inform us that the Sheriff's Office allowed the requestor's associate to review the entire file relating to Mr. Harris. You state that the Sheriff's Office reconsidered its position and now believes that some of the information should not be released to the requestor. You claim that the information you submitted in exhibit B is excepted from disclosure under section 552.107(1) of the Government Code. You also assert that the computer password information in exhibit D is not public information under section 552.021 of the PIA. In addition, you claim that the information in exhibit E is confidential criminal history information that is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your representation that the Sheriff's Office obtained some of the submitted information pursuant to a grand jury subpoena. This office has concluded that a grand jury is not a governmental body that is subject to the PIA, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the PIA. *See Gov't Code § 552.003(1)(B)* (PIA's definition of governmental body

does not include judiciary); Open Records Decision No. 513 at 3 (1988) (information held by grand jury, which is extension of judiciary for purposes of PIA, is not itself subject to PIA). When an individual or an entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the PIA. See Open Records Decision No. 513 at 3. Information that is not so held or maintained is subject to the Act and may be withheld from the public only if a specific exception to disclosure is shown to be applicable. *Id.* Information obtained pursuant to a grand jury subpoena is within the grand jury's constructive possession. See *id.* Thus, here, the information the Sheriff's Office obtained pursuant to a grand jury subpoena is in the grand jury's constructive possession and is not subject to disclosure under the PIA.¹ *Id.* at 4.

We turn to your section 552.107(1) claim for portions of the information in exhibit B. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). In this case, the Sheriff's Office is concerned about releasing to the public privileged communications between the Hill Country Village council members and the Village's attorneys. You inform us by telephone that, after speaking with the Village mayor, you have learned that the Village does not wish to claim the attorney-client privilege for this information. Accordingly, we find that the Sheriff's Office may not withhold the information based on section 552.107(1). See Tex. R. Evid. 503(c) (listing who may claim attorney-client privilege).

You assert that the computer user names and passwords in the documents in exhibit D are not public information under section 552.021 of the Government Code and therefore not submit to disclosure under the PIA. We agree. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We find that the marked user names and passwords are not subject to the PIA and need not be released.

As we begin to consider the applicability of the remaining exceptions you claim, we briefly consider the effect of the Sheriff Office's disclosure of the information to the requestor's associate. Section 552.007 of the Government Code prohibits a governmental body from selectively disclosing information that is not confidential by law. Thus, generally a

¹In light of this conclusion, we need not address your claim that the information in exhibit C is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy.

governmental body must release requested information to all requestors if it releases information to one member of the public. However, the exceptions you raise make information confidential. Consequently, in this case, section 552.007 does not require the Sheriff's Office to release the information to the extent it is confidential by law.

Section 552.101 excepts from disclosure information made confidential by law, including information made confidential by statute. You raise sections 411.083 and 411.084 of the Government Code for the information in exhibit E. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The information in exhibit E is CHRI generated by TCIC and NCIC. Accordingly, the information is excepted from required public disclosure by section 552.101 of the Government Code.

The submitted information also contains e-mail addresses obtained from the public. Section 552.137 makes certain e-mail addresses confidential.² Section 552.137 provides:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

²House Bill 2589 also makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The Sheriff's Office must, therefore, withhold e-mail addresses of members of the public under section 552.137.

In summary, the information the Sheriff's Office obtained pursuant to a grand jury subpoena is not subject to required public disclosure under the PIA. The marked user names and passwords are not subject to the PIA and need not be released. The Sheriff's Office must withhold the information we have marked under section 552.101 in conjunction with chapter 411 of the Government Code. The Sheriff's Office must withhold the email addresses we have marked based on section 552.137. The Sheriff's Office must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kay Hastings", with a long horizontal flourish extending to the right.

Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 198945

Enc: Submitted documents

c: Mr. Christopher Gale
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(w/o enclosures)