



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 8, 2005

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215

OR2005-01142

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 218149.

The City of Dallas (the "city") received a request for the personnel records of a named police officer and for information concerning a shooting by the named officer of a suspect during an alleged car burglary. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the requested information.<sup>1</sup>

Initially, you state and we acknowledge that this office recently issued two rulings that involved some of the same information that is at issue here. In Open Records Letter No. 2004-4808 (2004), we considered two requests that the city received for the personnel file and related information pertaining to the same named officer. In Open Records Letter No. 2004-8068, we considered two requests for the internal affairs and public integrity

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

investigations pertaining to the same named officer. Therefore, assuming that the four criteria for a “previous determination” established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the city may rely on our decisions in Open Records Letter Nos. 2004-4808 and 2004-8068 with respect to the information requested in this instance that was previously ruled upon in those decisions.<sup>2</sup> See Gov’t Code § 552.301(f); Open Records Decision No. 673 (2001). To the extent that the information requested in this instance was not the subject of these prior rulings, we will address your arguments for the information you have submitted.

Next, we note that the remaining information you submitted to this office as responsive to the request is a completed investigation, which is subject to section 552.022 of the Government Code. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. See Gov’t Code §§ 552.022(a)(1) (“a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108”). The completed investigation may be withheld if it is confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Section 552.103 is a discretionary exception and is not “other law” for the purpose of section 552.022. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (section 552.103 may be waived); Open Records Decision No. 663 (1999) (governmental body may waive section 552.103); see also 522 at 4 (1989) (discretionary exceptions generally). Thus, the city may not withhold the completed investigation for which it claims section 552.103 on this basis.

You claim that portions of the submitted information are confidential by law. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You claim that information you have marked accordingly is excepted from public disclosure pursuant to section 552.101 in conjunction with article 61.03 of the Code of Criminal Procedure. Chapter 61 of the Code of Criminal Procedure deals with intelligence information pertaining to street gangs. Article 61.02 provides in part that “a criminal justice agency may compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs.” Article 61.03 provides in relevant part:

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<sup>2</sup> The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

(a) A criminal justice agency that maintains criminal information under this chapter may release the information on request to:

- (1) another criminal justice agency;
- (2) a court; or
- (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

Crim. Proc. Code art. 61.03(a). Further, article 61.05 of the Code of Criminal Procedure provides that release of the information to a person who is not entitled to the information is a Class A misdemeanor. You inform us that the information you have marked is criminal gang information. Additionally, you do not inform us and the submitted records do not indicate that the requestor is one of the entities or individuals who is authorized to receive this type of information. Thus, based on your representations and our review of the records, we conclude that the city must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.

You also claim that criminal history record information ("CHRI") must be withheld under section 552.101. CHRI that is 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. Thus, to the extent the responsive information includes any

CHRI generated by TCIC or NCIC, such information is excepted from required public disclosure by section 552.101 of the Government Code.

You claim that a portion of the submitted information, which you have marked, consists of juvenile law enforcement records. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code. § 58.007. Some of the information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the information you have marked is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the information you have marked from disclosure under section 552.101 of the Government Code.

We note that a small amount of the submitted information is protected by common-law privacy, which is also encompassed by section 552.101. Common-law privacy protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (*citing United States*

*Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the submitted records and marked the information that the city must withhold under section 552.101 in conjunction with common-law privacy.

You claim that the social security numbers contained in the submitted information are confidential under federal law. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, you claim that portions of the information, which you have marked, are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We agree that you must withhold the information you have marked under section 552.130. Additionally, we have marked the images of license plates in the submitted photographs that also must be withheld under section 552.130.

In summary, the city may rely on our decisions in Open Records Letter Nos. 2004-4808 and 2004-8068 with respect to the information requested in this instance that was previously ruled upon in those decisions. The city must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure. To the extent the responsive information includes any CHRI generated by TCIC or NCIC, such information is excepted from required public disclosure by section 552.101 of the Government Code. You must withhold the juvenile law enforcement records that you have marked under section 58.007 of the Family Code in conjunction with section 552.101 of the Government Code. You must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law right to privacy. The social security numbers may be confidential under federal law. You must withhold the information that you have marked and that we have marked under section 552.130. The remaining submitted information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/seg

Ref: ID# 218149

Enc. Submitted documents

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(w/o enclosures)