



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 6, 2005

Ms. Susan Camp-Lee  
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309 East Main Street  
Round Rock, Texas 78664-5246

OR2005-02939

Dear Ms. Camp-Lee:

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# 221539.

The Round Rock Police Department (the "department"), which you represent, received a request for all information pertaining to a particular individual and for information related to a specified address. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes arrest warrants and their corresponding complaint affidavits. Article 15.26 of the Code of Criminal Procedure provides that "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is *public information*." Crim. Proc. Code art. 15.26 (emphasis added). Although you contend that "these warrants have not been executed [and therefore] are not public under Article 15.26 of the Texas Code of Criminal Procedure[,]" we note that article 15.26 makes no distinction between warrants that have been executed and warrants that have not been executed. *Compare* Crim. Proc. Code art. 15.26, *with* Crim. Proc. Code art. 18.01(b). Here, the submitted warrants meet the definitional requisites for warrants of arrest and are therefore public under article 15.26. *See* Crim. Proc. Code art. 15.01 (defining "warrant of arrest"). We note that the exceptions found in the Act generally do not apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Accordingly, the department must release the arrest warrants and complaint affidavits we have marked.

We next address your claim under section 552.101, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common-law right to privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis.

In this instance, the requestor's first request asks the department for "any incident on file involving" a named individual. The first request implicates the named individual's right to privacy. On the other hand, the requestor's second request seeks information on "any call, response and incident history as it relates to" a specified address. Because the second request does not ask the department to compile records on any particular individual, it does not implicate the privacy of any individual. We therefore conclude that the privacy concerns expressed in *Reporters Committee* are not implicated by the second request. As such, to the extent that the department maintains records solely responsive to the first request in which the named individual is portrayed as a suspect, defendant, or arrestee, the department must withhold such information in accordance with section 552.101 and the common-law right to privacy. To the extent records are responsive to the second request, such records do not implicate any individual's privacy rights and may not be withheld under section 552.101 on the basis of the holding in *Reporters Committee*.

Furthermore, the Texas Supreme Court, in *Industrial Foundation*, also 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 as types of information considered intimate and embarrassing. 540 S.W.2d at 683. In addition, this office has found that the following types of information are confidential under common-law privacy: 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 note that Exhibit D contains information that implicates individuals' common-law privacy interests. Accordingly, the department must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note that some information in Exhibit D is subject to the confidentiality provision of section 58.007 of the Family Code, which is also encompassed by section 552.101. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. In this regard, 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(c). Portions of Exhibit D involve allegations of juvenile conduct that occurred after September 1, 1997. *See* Fam. Code § 51.02(2) (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen years of age). Thus, this information is subject to section 58.007, and it does not appear that any of the exceptions in section 58.007 apply. We have marked the information in Exhibit D that must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We further note that Exhibit D contains information subject to section 261.201 of the Family Code, which is also encompassed by section 552.101 and provides in relevant part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in

an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We have marked the information in Exhibit D that is within the scope of section 261.201. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, this information is confidential pursuant to section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with 261.201 of the Family Code.

Next, we address your claim that criminal history record information (“CHRI”) contained in Exhibit D is excepted from disclosure. 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, which is also encompassed by section 552.101 of the Government Code, 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. We have marked the CHRI in Exhibit D that must be withheld.

We also note that Exhibit D contains social security numbers. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which are also encompassed by section 552.101, make confidential social security numbers and related records that are obtained or 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 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, the department should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We now turn to your claim under section 552.108 of the Government Code with respect to incident/investigation report case number 04-1022-0016. This section provides in part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that *did not* result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2) (emphasis added). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to a particular pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to concluded criminal investigations or prosecutions that did not result in conviction or deferred adjudication. A governmental body claiming subsection 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming subsection 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication.

In this instance, you inform us that incident/investigation report case number 04-1022-0016 "relates to [an] investigation[] of criminal charges . . . which are still pending." Based upon this representation, we conclude that the release of this report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531

S.W.2d at 185; *see also* Open Records Decision No. 127 at 3-5 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(1) authorizes the department to withhold the remaining information in this incident/investigation report, we note that the department has the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.<sup>1</sup>

Lastly, we turn to your claim under section 552.130 of the Government Code. This section 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[.]

Gov't Code § 552.130(a)(1), (2). By its terms, this section only excepts from disclosure information that pertains to motor vehicle records issued by the State of Texas. Information relating to motor vehicle records issued by other states is not subject to section 552.130 and may not be withheld on this basis. As such, the department must withhold the motor vehicle record information we have marked in Exhibit D to the extent such information relates to records that were issued by the State of Texas.

In summary, the department must release the marked arrest warrants and supporting complaint affidavits in accordance with article 15.26 of the Code of Criminal Procedure. To the extent the department maintains records that are solely responsive to the request regarding the named individual and that portray that individual as an arrestee, suspect, or defendant, the department must withhold such records pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Other than basic information, the department may withhold the information contained in incident/investigation report case number 04-1022-0016 pursuant to section 552.108(a)(1) of the Government Code. With respect to the Exhibit D: (1) the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy; (2) the information we have marked related to juvenile law enforcement records must be withheld under section 552.101 in conjunction with section 58.007 of the Family Code; (3) the information we have marked related to an alleged abuse of a child must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code; (4) the CHRI that we have marked must be withheld pursuant to section 552.101 in conjunction with chapter 411, subchapter F of the

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<sup>1</sup>With respect to criminal investigative materials, basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991). We therefore do not address your argument regarding this exception.

Government Code; (5) the social security numbers may be confidential under federal law; (6) the motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code to the extent such information pertains to records that were issued by the State of Texas; and (7) all remaining information must be released.

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,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/krl

Ref: ID# 221539

Enc. Submitted documents

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(w/o enclosures)