



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2005

Mr. Asem Eltiar
Assistant City Attorney
City of Arlington
Mail Stop 04-0200
P. O. Box 1065
Arlington, Texas 76004-1065

OR2005-09303

Dear Mr. Eltiar:

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# 234032.

The Arlington Police Department (the "department") received a request from the Arlington Independent School District (the "district") for all reports pertaining to a named district employee for the last five years. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the two submitted incident reports.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that is made confidential by statute. Gov't Code § 552.101. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center (TCIC) is confidential and not subject to disclosure. 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 Texas 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. 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. However, the information you have submitted consists of two department incident reports and not information generated by NCIC or TCIC. Therefore, we conclude that the department may not withhold the submitted incident reports under section 552.101 of the Government Code in conjunction with chapter 411.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a governmental entity is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). In this instance, the present request asks the department for all reports pertaining to a named district employee. We therefore determine that the request, in part, implicates the named individual's right to privacy. Thus, a report in which the named individual is identified as a suspect, arrestee, or criminal defendant normally must be withheld under section 552.101 in conjunction with common law privacy pursuant to the decision in *Reporters Committee*.

However, section 22.083(c)(1) of the Education Code authorizes a school district to obtain from any law enforcement agency all CHRI that relates to a district employee. Educ. Code § 22.083(c)(1); *see also* Gov't Code § 411.097(b) (school district is entitled to obtain CHRI that relates to a district employee from the DPS that district is authorized to obtain under chapter 22 of the Education Code); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Accordingly, the CHRI from the submitted incident report identifying the named district employee as an arrestee must be released to this requestor. The remaining information in this report must be withheld under section 552.101 in conjunction with common law privacy pursuant to *Reporters Committee*.

You have also submitted a department incident report in which the named individual is not a suspect, arrestee, or criminal defendant; rather, the named individual is identified as a victim in this other report. Thus, this information is not encompassed by *Reporters Committee*. However, this report includes a credit card number subject to section 552.136 of the Government Code.¹ This section provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Accordingly, the department must withhold the credit card number we have marked pursuant to section 552.136. The remaining information in this report must be released.

In summary, the department must release the identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions from the incident report identifying the named district employee as an arrestee. The remaining information in the incident report identifying the named district employee as an arrestee must be withheld under section 552.101 in conjunction with common law privacy in accordance with *Reporters Committee*. The marked credit card number in the other submitted report must be withheld under section 552.136. The remaining information in this other report 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

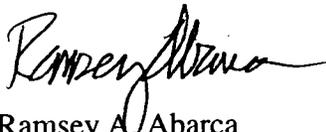
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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); *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 Office of the Attorney General 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. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 234032

Enc. Submitted documents

c: Mr. Rick Tice
Arlington I.S.D.
1203 W. Pioneer Parkway
Arlington, Texas 76013
(w/o enclosures)