



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 9, 2006

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
Legal Department
P. O. Box 1562
Houston, Texas 77002

OR2006-00240

Dear Mr. Gambrell:

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# 239825.

The City of Houston (the "city") received a request for a specific complaint file. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. However, section 552.108 is generally not applicable to the records of an internal investigation that is purely administrative in nature. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). You state that the Houston Office of Inspector General ("OIG") was established by Executive Order of the Mayor in February of 1988 as a central authority to investigate allegations of city employee misconduct, both criminal and

administrative. Upon review, however, we find that the submitted records document an administrative investigation and not a criminal investigation. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information. Accordingly, the submitted information may not be withheld on that basis.

You claim that the submitted information contains criminal history record information ("CHRI"), which is encompassed by section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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). 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. Similarly, 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. Furthermore, information compiled by a law enforcement agency that depicts a particular individual as a criminal suspect, arrestee, or defendant 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 United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Upon review, however, we find that the submitted information does not contain any CHRI.

You also claim that some of the highlighted portions of the submitted information are excepted from disclosure under section 552.117. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. In this case, you inform us that the employees whose records are at issue elected confidentiality under section 552.024. However, you do not inform us nor provide documentation showing that these employees elected confidentiality prior to this request for information.

Accordingly, if the employees elected to keep their personal information confidential under section 552.024 prior to the date on which the request for information was made, the city must withhold the information you have highlighted under section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117(a)(1) for employees who did not make a timely election to keep the information confidential.

We note that even if the highlighted employees' social security numbers are not protected under section 552.117(a)(1), they must be withheld under section 552.147 of the Government Code.¹ Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, if the employees did not make timely elections, the city must withhold the employees' social security numbers, which you have highlighted, under section 552.147 of the Government Code.²

You claim that the submitted information contains Texas-issued motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure 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. Upon review, we agree that you must withhold the Texas drivers' license numbers you have highlighted under section 552.130 of the Government Code.

In summary, if the employees whose information is at issue timely elected to keep their personal information confidential, you must withhold this information, which you have highlighted, under section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117(a)(1) for employees who did not make a timely election to keep the information confidential. Regardless of whether section 552.117(a)(1) applies, the employees' social security numbers, which you have highlighted, must be withheld under section 552.147 of the Government Code. The city must

¹Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

also withhold the Texas drivers' license numbers you have highlighted under section 552.130 of the Government Code. The remaining submitted information must be released.³

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); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

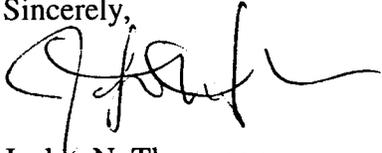
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

³We note, however, that the submitted information contains information that is confidential with respect to the general public. See Gov't Code § 552.023 (person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Thus, in the event the city receives another request for this information from someone other than this requestor or her representative, the city must ask this office for a decision whether the information is subject to public disclosure.

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,

A handwritten signature in black ink, appearing to read 'J. Thompson', with a long horizontal flourish extending to the right.

Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/trl

Ref: ID# 239825

Enc. Submitted documents

c: Vivian Lewis
HFD- Fire Marshal's Office
2931 W. 12 St.
Houston, TX 77008
(w/o enclosures)