



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2006

Ms. YuShan Chang
Assistant City Attorney
City of Houston - Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR2006-06899

Dear Ms. Chang:

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# 252633.

The City of Houston (the "city") received a request for a copy of the synopsis of a specified investigation completed by the Office of Inspector Generals. You claim that the highlighted portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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. 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. 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.* §§ 411.090-411.127. Based on our review of the synopsis, we find that it does not contain any CHRI obtained from the NCIC or TCIC network. Consequently, none of this information may be withheld on that basis.

You also claim that the highlighted portions of the submitted synopsis are protected by common law privacy. Section 552.101 of the Government Code encompasses the doctrine of common law privacy, which 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). To demonstrate the applicability of common law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. A compilation of a private citizen's criminal history is highly embarrassing information that is generally not of legitimate public interest. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). In this case, the submitted information is a comprehensive review of the Houston Fire Department (the "department") Recruiting Division's hiring practices for two specified academy classes. The purpose of the examination was to determine whether the department is complying with its recruiting guidelines in accepting applicants who have committed certain crimes. Accordingly, we find that there is a legitimate public interest in the applicants' criminal histories. *See Open Records Decision No. 542 (1990)* (information about the qualifications of a public employee is of legitimate concern to the public). Therefore, the highlighted criminal history information is not protected by common law privacy and the city may not withhold it on that basis.

We note, however, that much of the highlighted information was obtained from polygraph examinations. Section 1703.306 of the Occupations Code provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. You do not indicate that any of the exceptions in section 1703.306 apply in this instance. *See Open Records Decision No. 565 (1990)* (construing predecessor statute). Accordingly, we conclude that the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

In summary, the city must withhold the polygraph information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The remaining 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); *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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 252633

Enc. Submitted documents

c: Mr. William Cinco
2026 Pine River Drive
Kingwood, Texas 77339
(w/o enclosures)