



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 13, 2006

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2006-12025

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# 262154.

The Houston Police Department (the "department") received a request for information pertaining to a specified automobile accident. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.1175, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes CRB-3 reports completed pursuant to chapter 550 of the Transportation Code.<sup>1</sup> *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the governmental entity with two or more pieces of information

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<sup>1</sup>The Texas Department of Public Safety informs us that the Texas Peace Officer's Accident Report, ST-3 form, has been replaced by the Texas Peace Officer's Crash Report, CRB-3 form.

specified by the statute. *Id.* In this instance, the requestor has provided the department with two of the three requisite pieces of information. Therefore, the submitted CRB-3 reports must be released without redactions to the requestor. We will address your arguments against the disclosure of the remaining information.

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. This exception encompasses information that other statutes make confidential. Section 143.1214 of the Local Government Code provides in part:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department’s use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

(c) The department head or the department head’s designee may forward a document that relates to a disciplinary action against a fire fighter or police officer to the [civil service] director or the director’s designee for inclusion in the fire fighter’s or police officer’s personnel file maintained under Sections 143.089(a)-(f) [of the Local Government Code] only if:

- (1) disciplinary action was actually taken against the fire fighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov’t Code § 143.1214(b)-(c).<sup>2</sup> You state that the submitted information in Exhibit 4 is maintained in the Internal Affairs Division (“IAD”) investigatory files of the department.

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<sup>2</sup>We understand that the City of Houston is a civil service municipality under chapter 143 of the Local Government Code.

You inform us that this information relates to an IAD investigation of a department officer in which the allegations did result in disciplinary action under chapter 143 of the Local Government Code. You also state that the department has forwarded documents relating to these allegations that meet the conditions of section 143.1214(c) to the officer's personnel files maintained under section 143.089(a) of the Local Government Code.<sup>3</sup> Finally, you state that the information at issue does not meet all of the conditions of section 143.1214. We note, however, that the information in Exhibit 4 includes law enforcement records which are also maintained separate and apart from the internal affairs investigation. The request does not specifically seek information from the officer's department personnel file. Instead, the request seeks information pertaining to a specified incident. Because the requestor asks for information about the incident in general, both the officer's personnel file and any copy of the investigatory materials that the department maintains for law enforcement purposes are responsive. The department may not engraft the confidentiality afforded to records under section 143.1214 to records that exist independently of the officer's internal files. Accordingly, the information in Exhibit 4 that is maintained solely in the department's internal investigative files is excepted from disclosure under section 552.101 in conjunction with section 143.1214 of the Local Government Code. However, that information which is maintained for other law enforcement related purposes is not confidential under section 143.1214 of the Local Government Code. We will address your remaining arguments against the disclosure of any information in Exhibit 4 which is not confidential under section 143.1214.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel, physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided in this chapter.

Health & Safety Code § 773.091. Subsection 773.091(g) provides, however, that this confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g).

After our review, we find that some of the information in Exhibit 4 consists of records of the identity, evaluation, or treatment of a patient by emergency medical services personnel. You do not indicate that the department has received written consent regarding the release of these

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<sup>3</sup>Section 143.089(a) of the Local Government Code provides for the existence of a civil service file that must contain certain types of information relating to a police officer. *See* Local Gov't Code § 143.089(a).

records. *See id.* § 773.093 (listing elements of consent for release of EMS records). Thus, with the exception of the information subject to section 773.091(g), which must be released, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

The information in Exhibit 4 also includes medical records. Section 552.101 of the Government Code also encompasses information protected by the Medical Privacy Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991).

Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). We have reviewed the information in Exhibit 4 and marked the medical records which may only be released in accordance with the MPA.

Section 552.101 also encompasses information protected by section 411.083 of the Government Code. Criminal History Record Information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Section 411.083 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, *generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or another criminal justice agency must be withheld under section 552.101 in conjunction with Government Code chapter 411, subchapter F. We have reviewed the information in Exhibit 4 and marked the CHRI that must be withheld under section 552.101.

Section 552.101 of the Government Code also encompasses the doctrine of common law privacy. Common law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Texas 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. This office has found that an individual's criminal history, when compiled by a governmental body, is excepted from required public disclosure under common law privacy. We have reviewed the records in Exhibit 4 and marked the information that must be withheld pursuant to section 552.101 in conjunction with common law privacy.

Next, we address your claim under section 552.108 of the Government Code. This section excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 96 (Tex. 1977). You inform us that the information in Exhibits 2 and 3 relates to a past criminal prosecution. Based on your representation and our review, we find that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *written n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement information that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to information held to be public in *Houston Chronicle*. *See Open Records Decision No. 17* (1976) (listing basic information that must be released from offense report in accordance with *Houston Chronicle*). Basic information includes the arrestee's address. You inform us, however, that the arrestee's home address is excepted under section 552.1175 of the Government Code.

Section 552.1175 of the Government Code provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). If the arrestee is a peace officer and elects to restrict access to his personal information in accordance with section 552.1175, the department must withhold the arrestee's home address. *See, e.g.*, Open Records Decision No. 678 (2003). Otherwise, the arrestee's home address is not protected under section 552.1175 and must be released along with the other basic information in Exhibit 2. The remaining information in Exhibit 2, along with the information in Exhibit 3, may be withheld under section 552.108 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[,] a motor vehicle title or registration issued by an agency of this state[, or ] a personal identification document[.]" Gov't Code § 552.130. We note that this section does not protect out-of-state motor vehicle record information. We have marked the Texas motor vehicle record information that must be withheld under section 552.130.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>4</sup> *Id.* § 552.147. Therefore, the department must withhold the social security numbers we have marked under section 552.147.

In summary, the CRB-3 reports must be released in their entirety pursuant to section 550.065(c)(4) of the Transportation Code. The information in Exhibit 4 that is maintained solely in the department's internal investigative files is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. That information in Exhibit 4 which is not confidential under section 143.1214 of the Local Government Code must be disposed of in accordance with the remainder of this ruling. With the exception of the information subject to section 773.091(g)

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<sup>4</sup>We 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.

of the Health and Safety Code, the department must withhold the EMS records we have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. The medical records we have marked may only be released in accordance with the MPA. The CHRI we have marked must be withheld under section 552.101 in conjunction with chapter 411 of the Government Code. The department must also withhold the information we have marked under section 552.101 in conjunction with the doctrine of common law privacy. The information we have marked under section 552.1175 of the Government Code must be withheld if the officer to whom the information pertains makes a proper election under section 552.1175. With the exception of basic information, the department may withhold the information in Exhibits 2 and 3 pursuant to section 552.108 of the Government Code. The Texas motor vehicle record information and social security numbers we have marked must be withheld under sections 552.130 and 552.147 of the Government Code, respectively. 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,



James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/dh

Ref: ID# 262154

Enc. Submitted documents

c: Ms. Arlene Kelly  
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(w/o enclosures)