



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 7, 2006

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2006-13196

Dear Ms. Lentz:

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# 264002.

The Williamson County Sheriff's Office (the "sheriff") received a request for the personnel file of a former employee. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.122, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that Exhibit E consists of juvenile law enforcement records that are confidential 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. Section 552.101 encompasses information made confidential by other statutes such as section 58.007 of the Family Code. The relevant language of 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.

Family Code § 58.007(c). The majority of information in Exhibit E consists of law enforcement records of a juvenile who engaged in delinquent conduct after September 1, 1997. *See* Fam. Code § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). However, the memorandum discussing the structure and format of the report is an administrative document, not a juvenile law enforcement record. Accordingly, the memorandum must be released. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to the remaining information in Exhibit E; therefore, the information we have marked is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.<sup>1</sup>

We also note that Exhibit F contains criminal history record information. Section 552.101 of the Government Code also encompasses confidentiality relating to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center or by the Texas Crime Information Center 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)*. 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*. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the

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<sup>1</sup> Because our determination on this issue is dispositive, we need not address your remaining arguments against the disclosure of Exhibit E.

Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, you must withhold the marked CHRI under section 552.101 in conjunction with federal and state law.

Next, you state that the information in Exhibits C and D are excepted from disclosure under section 552.108(a)(2). Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning a criminal investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). 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. You state that the information in Exhibit C relates to two criminal investigations in which the statute of limitations has run. You further state that neither case resulted in a conviction or a deferred adjudication. You state, and the information reflects, that the information in Exhibit D relates to a criminal case where no charges were filed and no criminal charges were pursued. Based on your representations and our review, we find that section 552.108(a)(2) is applicable to both Exhibit C and Exhibit D.

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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibits C and D from disclosure based on section 552.108(a)(2).<sup>2</sup>

Next you state that the information in Exhibit B is excepted from disclosure under section 552.122 of the Government Code. Section 552.122 excepts from public disclosure “a test item developed by a . . . governmental body[.]” Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated,” but does not encompass evaluations of an employee’s overall job performance or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

Having considered your arguments, we find that the Entrance Level Examination contained in Exhibit B consists of questions that are a standard means by which an individual’s or group’s knowledge or ability in a particular area. Further we find that release of these

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<sup>2</sup> Because our determination under section 552.108 is dispositive, we need not address your remaining arguments against the disclosure of Exhibits C and D.

questions would compromise the effectiveness of the test when used in the future. Thus, the information in Exhibit B qualifies as test items under section 552.122(b). Accordingly we conclude that the department may withhold the information in Exhibit B under section 552.122 of the Government Code.

Next, you state that the information in Exhibit F contains information that is excepted from disclosure under section 552.130. Section 552.130 of the Government Code, provides in part:

(a) Information is excepted from the requirements 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). We agree that the you must withhold the Texas motor vehicle record information you have marked under section 552.130. We have also marked additional information that must be withheld under section 552.130.

Next you state that Exhibit F contains social security numbers that must be withheld under section 552.147 of the Government Code. 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. Therefore, we agree that the department must withhold the social security numbers marked in Exhibit F under section 552.147.<sup>3</sup>

Finally, you claim that the Exhibit G is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or

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<sup>3</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.

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

*Id.* § 552.136. We have reviewed the submitted information and it does not contain any credit card numbers. Accordingly, you may not withhold any of the requested information under section 552.136.

In summary, you must withhold the marked portion of Exhibit E under section 552.101 in conjunction with section 58.007 of the Family Code. With the exception of basic information, you may withhold Exhibits C and D under section 552.108(a)(2) of the Government Code. You may withhold Exhibit B under section 552.122. You must withhold the CHRI, Texas motor vehicle information, and social security numbers in Exhibit F under sections 552.101, 552.137, and 552.147. You must release the remaining information.

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).

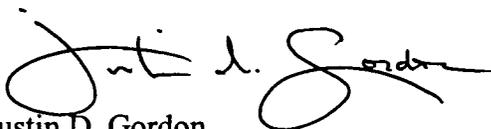
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/sdk

Ref: ID# 264002

Enc. Submitted documents

c: Ms. Tanya Brown  
13222 Ascot Glen Lane  
Houston, Texas 77082  
(w/o enclosures)