



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2007

Mr. C. Gaffney Phillips
City Attorney
City of Livingston, Texas
200 West Church Street
Livingston, Texas 77351-3281

OR2007-00153

Dear Mr. Phillips:

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# 268445.

The Livingston Police Department (the "department") received a request for a specified case file and related documents. You claim that parts of the requested information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You state that the submitted information may implicate the proprietary interests of third parties. You state, and provide documentation showing, that you have notified the following third parties, Memorial Health Systems of East Texas ("MHS"), including Memorial Medical Center Livingston ("Livingston"), First Bank and Trust ("First"), First State Bank ("State"), Genco Federal Credit Union ("Genco"), and Peoples State Bank ("Peoples"). We have reviewed the submitted arguments as well as the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, the department states that some of the submitted information was obtained pursuant to grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and therefore are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983); *but see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* Open Records Decision No. 513 (1988).

In this instance, we understand that during a criminal investigation for the offense of theft, the Polk County Grand Jury issued subpoenas duces tecum to First, State, Genco, Peoples, MHS, and Livingston, and the department obtained exhibits 2.e, 2.g.i, 2.g.ii, 2.h, 2.i, and 2.j on behalf of the grand jury. Upon review, we find that these exhibits obtained in compliance with the subpoenas are not subject to disclosure under the Act because they are maintained on behalf of the judiciary.²

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 section encompasses section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the IRS with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The submitted information includes documents that contain data collected by the IRS which reflect the tax liability of an individual. Upon review, we find that portions of the submitted information, which we have marked, contain confidential tax return information and must be withheld pursuant to section 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. 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).

²Because we find that this information is not subject to the Act, we do not address any additional arguments under the Act with regard to this information.

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 (1990). 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. Accordingly, the information we have marked is excepted from required public disclosure by section 552.101 of the Government Code.

You also claim that references to individuals found in exhibits 2.a, 2.b, 2.c, and 2.d are confidential by law under section 552.101 of the Government Code. However, you have not cited to a statute, nor are we aware of one, that makes these references to individuals confidential. Accordingly, this information may not be withheld under section 552.101.

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 [or] a motor vehicle title or registration issued by an agency of this state.” *Id.* § 552.130.³ In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle information we have marked.

Section 552.136 of the Government Code states 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. An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* We note that some of the bank account numbers in the submitted information belong to the requestor. The requestor has a right of

³The Office of the Attorney General will raise mandatory exceptions like sections 552.130, 552.136, 552.137 and 552.147 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

access to these numbers and they must be released to him. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). The department must withhold the bank account numbers we have marked pursuant to section 552.136.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The e-mail address we have marked does not appear to be of a type specifically excluded by section 552.137(c). We understand that the relevant member of the public has not consented to the release of the e-mail address. Therefore, the department must withhold the e-mail address we have marked under section 552.137.

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

Lastly, the highlighted information in exhibit 2.f is not responsive to the request because it does not relate to the case specified in the request. Thus, the department need not provide the information.

In summary, the submitted information produced in compliance with grand jury subpoenas is not subject to the Act. The department must withhold the confidential tax return information and CHRI, which we have marked, pursuant to section 552.101 of the Government Code. You must withhold the Texas motor vehicle information we have marked pursuant to section 552.130. You must withhold the bank account numbers we have marked pursuant to section 552.136. You must withhold the e-mail address we have marked pursuant to section 552.137. You must withhold the social security number we have marked pursuant to section 552.147. The remaining information 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 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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/krl

Ref: ID# 268445

Enc. Submitted documents

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