



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 25, 2008

Mr. Jesús Toscano, Jr.
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7BN
Dallas, Texas 75201

OR2008-03892

Dear Mr. Toscano:

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# 305298.

The City of Dallas (the "city") received a request for all incident reports written by the Dallas Marshal's Office during the time period of January 1, 2006 through January 1, 2008. You state the city will provide some information to the requestor. However, you claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ 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 information protected by other statutes. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under chapter 411 of the Government Code. 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

¹ We 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.

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 Texas Department of Public Safety ("DPS") maintains, except that 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) of the Government Code 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). We note that an individual's current involvement in the criminal justice system, including active warrant information, does not constitute criminal history information for purposes of section 552.101. In addition, information relating to routine traffic violations is not excepted from release under section 552.101 of the Government Code on this basis. *Cf. id.* § 411.082(2)(B). Accordingly, we conclude that none of the information in Exhibits B and C is confidential under chapter 411 and therefore no portion of Exhibits B and C may be withheld under section 552.101 on this basis.

The city then asserts that Exhibits B and D must be withheld under common-law of privacy. Section 552.101 also encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Furthermore, this office has found that common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. Accordingly, the city must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information in Exhibits B and D constitutes highly intimate or embarrassing information of no legitimate concern to the public. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Next, the city argues that the marked peace officer's cellular telephone number in Exhibit E may be withheld under section 552.108. Section 552.108(b)(1) of the Government Code

excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. See Gov't Code § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." *Id.* at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

You inform us that the cellular telephone number you have marked is assigned to the peace officer to carry out his law enforcement duties. You assert that the release of this cellular telephone number would interfere with law enforcement. Based on your representations and our review of the information at issue, we conclude that the city may withhold the cellular telephone number you have marked under section 552.108(b)(1) of the Government Code.

Finally, the city argues portions of the remaining information constitute Texas motor vehicle record information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The city must therefore withhold the Texas motor vehicle record information we have marked under section 552.130.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy in Exhibits B and D. The city may withhold the peace officer's cellular telephone number it has marked in Exhibit E under section 552.108 of the Government Code. The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

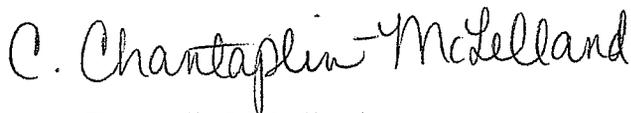
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/mcf

Ref: ID# 305298

Enc. Submitted documents

cc: Mr. David Schechter
WFAA Television
606 Young Street
Dallas, Texas 75202
(w/o enclosures)