



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2009

Ms. Evelyn W. Njuguna
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-00842

Dear Ms. Njuguna:

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# 333003.

The City of Houston (the "city") received a request for information relating to an investigation of a fire. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.130, 552.136, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you submitted.

We first note that some of the submitted information appears to have been obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that for the purposes of the Act, a grand jury is a part of the judiciary and is therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Moreover, records kept by another person or entity

¹We note that the city did not claim section 552.136 of the Government Code within the ten-business-day period prescribed by section 552.301(b) of the Government Code. Nevertheless, we will address section 552.136, which is a mandatory exception and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). We also note that the city also initially raised sections 552.107, 552.108, and 552.111 of the Government Code but has submitted no arguments in support of the applicability of those exceptions. Therefore, this decision does not address sections 552.107, 552.108, and 552.111. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating reasons why claimed exceptions apply to information at issue).

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), 398 (1983); *but see* ORD 513 at 4 (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* ORD 513. Thus, to the extent that the city has possession of the submitted information as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of any such information. To the extent that the city does not have possession of the submitted information as an agent of the grand jury, the information is subject to the Act and must be released unless it falls within an exception to public disclosure.

We next note that the submitted information is subject to disclosure under section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation. Although you seek to withhold the information under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022(a)(1). Therefore, the city may not withhold any of the submitted information under section 552.103. However, we will consider your claims under sections 552.101, 552.130, and 552.136 of the Government Code, which are other law that makes information confidential for the purposes of section 552.022(a)(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 exception encompasses information that other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general

public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. 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. *See id.* § 411.089(b). We have marked CHRI that the city must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Information acquired from a polygraph examination is confidential under section 1703.306 of the Occupations Code, which 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;
- (2) the person that requested the examination;
- (3) a member, or the member’s agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner’s activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

Occ. Code § 1703.306(a). We have marked information acquired from a polygraph examination that the city must withhold under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy protects

the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked information that is intimate or embarrassing and not a matter of legitimate public interest. The city must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130. We generally agree that section 552.130 is applicable to the Texas driver's license and motor vehicle information that you have highlighted. We note, however, that one of the highlighted license plate numbers pertains to a vehicle whose registered owner is deceased. Section 552.130 protects privacy, which is a personal right that lapses at death. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Therefore, the license plate number of the vehicle whose registered owner is deceased may be withheld under section 552.130 only if a living individual now owns an interest in that vehicle. With the possible exception of that information, the city must withhold the highlighted Texas driver's license, license plate, and vehicle identification numbers under section 552.130. We have marked other Texas driver's license, motor vehicle, and personal identification information that must also be withheld under this exception.

Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of [the Act], 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(b); see *id.* § 552.136(a) (defining “access device”). The city must withhold the bank account, bank routing, and credit card account numbers that we have marked under section 552.136.

We note that the remaining information includes the e-mail addresses of members of the public. Section 552.137 of the Government Code states that “an e-mail address of a member

of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure.² *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The city must withhold the e-mail addresses that we have marked under section 552.137 unless the owner of an e-mail address has affirmatively consented to its public disclosure.

In summary: (1) any information held by the city as an agent of the grand jury is in the grand jury’s constructive possession and is not subject to disclosure under the Act; (2) the city must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code, section 1703.306 of the Occupations Code, and common-law privacy; (3) the city must withhold the highlighted Texas driver’s license, license plate, and vehicle identification numbers under section 552.130 of the Government Code, including the license plate number of the vehicle whose registered owner is deceased if a living individual owns an interest in the vehicle; (4) the Texas driver’s license, motor vehicle, and personal identification information that we have marked must also be withheld under section 552.130; (5) the marked bank account, bank routing, and credit card account numbers must be withheld under section 552.136 of the Government Code; and (6) the marked e-mail addresses must be withheld under section 552.137 of the Government Code unless the owner of an e-mail address has consented to its disclosure.³ The rest of the submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

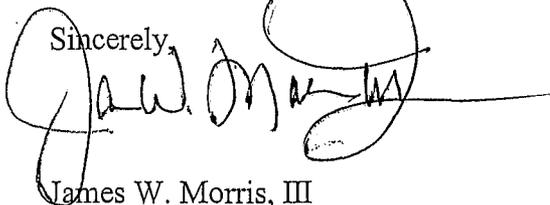
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.137 on behalf of a governmental body, as this exception is mandatory and may not be waived. Gov’t Code §§ 552.007, .352; ORD 674 at 3 n.4.

³We note that the remaining information includes social security numbers. 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.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Morris, III'. The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 333003

Enc: Submitted documents

c: Requestor
(w/o enclosures)