



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2009

Chief Herbert Gilbert  
City of South Houston Police Department  
1023 Dallas Street  
South Houston, Texas 77587

OR2009-06167

Dear Chief Gilbert:

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# 342436.

The City of South Houston Police Department (the "department") received a request for all DWI arrest reports during a specified time period.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, 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. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

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<sup>1</sup>You state the department sought and received clarification of the information requested from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request). Further, you state that you have left telephone messages with the requestor to discuss the costs of copying the requested reports. *See* Gov't Code § 552.2615 (governmental body must provide requestor with written itemized cost estimate when charges will exceed \$40).

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that some of the requested reports consist of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). You do not inform us whether the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given this assumption, we conclude that the department must withhold the arrest reports for booking numbers 08010509, 08009364, 05005516, 07008259, and 08009713 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).*

Section 552.101 also encompasses confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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. 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. However, 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). Upon review, we agree that portions of the submitted information, which we have marked, consist of CHRI, and must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. However, none of the remaining information constitutes CHRI for purposes of chapter 411, and none may be withheld on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. 540 S.W.2d at 683. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure under common-law privacy. See Open Records Decision Nos. 343 (1982) (references in emergency medical records to drug overdoses, acute alcohol intoxication, obstetrical or gynecological illnesses, convulsions or seizures, and emotional or mental distress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 470 (1987) (illness from severe emotional and job-related stress). Further, this office has determined that a compilation of a private individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. Cf. *United States Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). However, we find that none of the remaining submitted information is intimate or embarrassing and of no legitimate public concern, nor does it constitute a compilation of criminal history for purposes of common-law privacy; thus none of the remaining information may be withheld on the basis of common-law privacy.

Next, section 552.108(a)(1) of the Government Code 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.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that some of the submitted information relates to pending criminal prosecutions. Based on your representations and our review of the submitted information, we conclude that the release of the reports relating to pending prosecutions would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14<sup>th</sup> Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 of the Government Code 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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the arrest reports for booking numbers 08010451, 08010413, 08010310, 02000584, 08010002, 08010116, 03002677, 08009796, 08008869, and 08009363 under section 552.108(a)(1).

Next, you claim that some of the submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an 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. See *id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Although you state that some of the cases at issue have been dismissed, you have not identified which reports relate to these cases. By not identifying the information that you claim is subject to section 552.108(a)(2), the department has failed to establish that any of the submitted information concerns an investigation that concluded in a result other than a conviction or deferred adjudication. See Gov't Code § 552.301(e)(1)(D) (governmental body must submit copy of specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents). Therefore, the department may not withhold any of the submitted information under section 552.108(a)(2).

Next, section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license and registration information. Gov't Code § 552.130. With the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.130 of the Government Code. We have marked additional information that must be withheld under section 552.130.

Finally, 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>2</sup> Gov't Code § 552.147(a). With the exception of the information we have marked for release, the department may withhold the social security numbers you have marked pursuant to section 552.147 of the Government Code.

In summary, (1) the department must withhold the arrest reports for booking numbers 08010509, 08009364, 05005516, 07008259, and 08009713 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the

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<sup>2</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.

department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code; (3) with the exception of basic information, the department may withhold the arrest reports for booking numbers 08010451, 08010413, 08010310, 02000584, 08010002, 08010116, 03002677, 08009796, 08008869, and 08009363 under section 552.108(a)(1); (4) with the exception of the information we have marked for release, the department must withhold the information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code; and (5) with the exception of the information we have marked for release, the department may withhold the information you have marked under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 342436

Enc. Submitted documents

c: Requestor  
(w/o enclosures)