



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 29, 2009

Mr. David K. Walker  
County Attorney  
Montgomery County  
207 West Phillips, Suite 100  
Conroe, Texas 77301

OR2009-10524

Dear Mr. Walker:

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# 350449.

The Montgomery County Sheriff's Department (the "department") received a request for the following information pertaining to Cause Number 07-10-10877-CR, *The State of Texas v. William McNeill*:

1. personnel information of the officers involved in the case;
2. policies and manuals relating to arrests, searches, or seizures;
3. information relating to witnesses, informants, and police officers involved in the case;
4. police officers' personal notes;
5. complaints against officers involved in the case;
6. documents the officers relied on in giving their testimony; and
7. documents experts relied on in making their conclusions.

The requestor agreed to the department's withholding of some of the information. The department asserts the information responsive to items 4, 6, and 7 is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the department's claimed exceptions to disclosure and have reviewed the submitted information.

First, we note Exhibit D includes search warrants and search warrant returns. Information filed with a court is public information and may not be withheld from disclosure unless it is confidential by law. Gov't Code § 552.022(a)(17). Although the department asserts exception under section 552.108, this section does not make information confidential. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, if the search warrants and search warrant returns have been filed with a court, the department must release this information. If these records have not been filed with a court, we will consider the department's section 552.108(a)(1) assertion for this information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(a); *see also Ex parte Pruitt*, 531 S.W.2d 706 (Tex. 1977). In this instance, the department and an assistant district attorney argue release of Exhibits D and G, which relate to current prosecutions, will compromise the prosecutions. Based on these representations and our review of the records, we agree the department may withhold Exhibits D and G under section 552.108(a)(1). *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases).

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 Publ'g Co.* The department argues it need not release basic information because the requestor did not ask for the offense report but rather for the documents the officers and experts relied on. Because, as the department states, the officers and experts relied on the information in the report, the report is thereby a document they relied on. Thus, the report is responsive to the request. Accordingly, with the exception of the basic front page offense and arrest information, the department may withhold Exhibits D and G from disclosure based on section 552.108(a)(1).

Next, the department contends section 552.108(a)(2) excepts Exhibit F from public disclosure. Section 552.108(a)(2) excepts from disclosure information concerning a criminal investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested

information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. However, section 552.108 is generally not applicable to internal administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution).

The department states and the documents reflect Exhibit F consists of two internal affairs investigations of department personnel. Although one of the investigations includes a copy of a criminal offense report the department considered as part of its internal investigation, the department has not demonstrated the two internal affairs investigations are criminal investigations. Thus, the department may not withhold its two administrative investigations under section 552.108(a)(2).

Although the department seeks to withhold the L-2 and L-3 declarations under section 1701.454 of the Occupations Code, we note section 1701.306 of the Occupations Code applies to these declarations. Section 552.101 of the Government Code exempts 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 other statutes make confidential. Section 1701.306 provides as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Thus, we conclude the department must withhold the L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 also encompasses 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 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) 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 chapter 411, subchapter F. In addition, information relating to routine traffic violations is not excepted from release under section 552.101 on this basis. *Cf. id.* § 411.082(2)(B). Upon review, we conclude the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

The department also seeks to withhold CHRI under article 60.03 of the Code of Criminal Procedure, which provides in pertinent part:

(a) Criminal justice agencies, . . . are entitled to access the data bases of the Department of Public Safety, The Texas Juvenile Probation Commission, the Texas Youth Commission, and the Texas Department of Criminal Justice in accordance with applicable state or federal law or regulations. The access granted by this subsection does not grant an agency, . . . the right to add, delete, or alter data maintained by another agency.

...

(c) . . . a criminal agency, . . . may [not] disclose to the public information in an individual's criminal history record if the record is protected by state or federal law or regulation.

Crim. Proc. Code art. 60.03. The remaining information the department seeks to withhold pursuant to article 60.03 does not constitute criminal history information and, therefore, the department may not withhold it under section 552.101 on that basis.

Some of the information in Exhibit F is confidential under section 552.101 in conjunction with the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in pertinent part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a), (b), (c). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we have marked the medical records subject to the MPA. The department may release them only in accordance with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In addition, information revealing an individual's criminal history compilation is highly embarrassing information. *Cf. U.S. 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 individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, records relating to routine traffic violations are not considered criminal history record information. *Cf. Gov't Code* § 442.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction common-law privacy. However, there is a legitimate public interest in the

compilation of criminal history of a peace officer, and therefore, such information is not private.

The requested records contain information that is excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address and social security number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure regardless of whether the officer elects to withhold the information. *Id.* § 552.117(a)(2). Thus, the department must withhold the officers' home addresses and social security number we marked under section 552.117(a)(2).

Lastly, the remaining submitted information includes Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information relating to a Texas driver's license or motor vehicle title or registration. *Id.* § 552.130. Section 552.130 does not apply to information relating to out-of-state motor vehicle records. Pursuant to section 552.130, the department must withhold the Texas motor vehicle record information we have marked in the remaining submitted information.

In summary, if the search warrants and search warrant returns have been filed with a court, the department must release this information pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the department may withhold Exhibits D and G under section 552.108(a)(1). Pursuant to section 552.101 of the Government Code, the department must withhold 1) the L-2 and L-3 declarations under section 1701.306 of the Occupations Code; 2) the medical records we marked under the MPA; 3) the CHRI we marked under section 411.083 of the Government Code; and 4) the private information we marked. Finally, the department must withhold the Texas motor vehicle record information we marked under section 552.130 and the police officers' home addresses and social security number we marked under section 552.117(a)(2). The department must release the rest of the submitted information.<sup>1</sup>

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

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<sup>1</sup>The submitted information includes social security numbers. We note 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. Gov't Code § 552.147(b).

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 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 350449

Enc: Marked documents

c: Requestor  
(w/o enclosures)