



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2009

Mr. James Eidson
Criminal District Attorney
Taylor County Courthouse
300 Oak Street
Abilene, Texas 79602-1577

OR2009-13261

Dear Mr. Eidson:

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# 355803.

The Taylor County District Attorney (the "district attorney") received a request for five categories of information relating to the arrest and criminal charge of a named individual. You state that you do not maintain information responsive to some of the categories of the request.¹ You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.109 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your arguments under section 552.108 of the Government Code, which provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(1), (a)(4). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted DPS filing data sheet and case report, DWI interview sheet, breath test refusal certificate, witness affidavit, offender data sheet and photograph, and the audio and video tapes of the arrest relate to a pending criminal investigation. Based upon this representation, we conclude that the release of this information 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 [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). Therefore, we conclude that section 552.108(a)(1) is generally applicable to the information you seek to withhold, including the DPS filing data sheet and case report, DWI interview sheet, breath test refusal certificate, witness affidavit, offender data sheet and photograph, and the audio and video tapes of the arrest.

Section 552.108(a)(4) is applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. You state that the submitted prosecutor notes and personal notes of the Pre-Trial Diversion Officer were "prepared by an attorney representing the state in the cause of preparing for criminal litigation" and "constitute the prosecutor's records dealing with the prosecution of crime." Based on your arguments and our review of the information at issue, we agree that this information was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation. Therefore, we find section 552.108(a)(4) is

applicable and the district attorney may withhold the prosecutor notes and personal notes of the Pre-Trial Diversion Officer on that basis.²

However, we note that 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*. See 531 S.W.2d at 186-87. Basic information includes, among other things, an arrestee's name, social security number, alias, race, sex, age, and address. See *id.* at 179-80, 185-87; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The district attorney must generally release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. Therefore, with the exception of basic information, the district attorney may withhold the information at issue under section 552.108(a)(1) of the Government Code. We note, however, that some of the basic information may be excepted from disclosure under section 552.1175 of the Government Code.³

Section 552.1175 of the Government Code provides in part the following:

Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). Some of the basic information, as well as portions of the remaining information, pertain to a police sergeant with the City of Sweetwater. If this individual is currently a licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b), the district attorney must withhold the information we have marked under section 552.1175.

²As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.101 of the Government Code excepts from public 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. Section 552.101 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 (the "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 the 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. We also note that an individual's current involvement in the criminal justice system, including active warrant information, does not constitute CHRI. Upon review, we note that the information we have marked consists of CHRI, and must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, the remaining information at issue does not consist of CHRI for purposes of chapter 411; therefore, none of the remaining information is confidential under section 411.083, and the district attorney may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code 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. A compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, the remaining information at issue does not pertain to a private citizen but to a police sergeant. There is a legitimate public interest in the compilation of criminal history of a peace officer, and therefore, such information is not private. Accordingly, none of the

remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

We note that the remaining information contains a fingerprint. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See Gov't Code* §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the district attorney must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

We note the remaining information also contains information subject to 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See Gov't Code* § 552.130(a)(1). Thus, the district attorney must withhold the Texas motor vehicle record information contained in the remaining submitted documents, which we have marked, under section 552.130 of the Government Code.

Finally, we note that the requestor is a representative of a Texas state agency. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989).* These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See ORD 516.* However, the transfer of confidential information from one governmental body to another is prohibited where the relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See Attorney General Opinions DM-353 at 4 n. 6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); see also Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).* Sections 552.108 and 552.1175 of the Government Code do not have specific release provisions governing public release of information. Thus, pursuant to the intergovernmental transfer doctrine, the district attorney has the discretion to release to the requestor the submitted information that is subject to sections 552.108 and 552.1175.

In summary, with the exception of basic information, the district attorney may withhold the DPS filing data sheet and case report, DWI interview sheet, breath test refusal certificate, witness affidavit, offender data sheet and photograph, and the audio and video tapes of the arrest under section 552.108(a)(1) of the Government Code and may withhold the prosecutor notes and personal notes of the Pre-Trial Diversion Officer under sections 552.108(a)(4) of the Government Code. In the remaining submitted information, the district attorney must withhold: (1) the marked CHRI under section 552.101 in conjunction with section 411.083 of the Government Code; (2) the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code; (3) the information we have marked under section 552.1175 if the individual at issue is currently a licensed peace officer who elects to restrict access to their information in accordance with section 552.1175(b); and (4) the information we have marked under section 552.130. The remaining information must be released to the requestor. Pursuant to the intergovernmental transfer doctrine, the district attorney has the discretion to release to the requestor the submitted information that is subject to sections 552.108 and 552.1175.⁴

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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

⁴We note the remaining information contains 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.

Ref: ID# 355803

Enc. Submitted documents

c: Requestor
(w/o enclosures)