



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 26, 1995

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR95-980

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25495.

The City of Houston Legal Department has received open records requests for documents relating to investigations completed by the Public Integrity Review Group of the Houston Police Department ("PIRG") since the requestor's last request. You indicate that the city released several of the requested files. However, you contend that all or parts of other files are excepted from disclosure under sections 552.101, .103(a), .108(a), and .117. You have submitted for review the information you believe is excepted from disclosure and have marked the submitted information as exhibits 4 through 6 and 8 through 16.¹

¹You also submitted for review exhibits 2, 3, and 7. You argue that exhibits 2 and 3 are excepted from disclosure under section 552.101 of the Government Code by virtue of section 143.1214 of the Local Government Code. Because your argument requires us to interpret a statute that we have not yet interpreted, we will be addressing the availability of these exhibits in an Open Records Decision (our file number RQ-688). You argued that exhibit 7 was excepted from disclosure under section 552.108. However, you have since discovered that section 552.108 no longer applies and have released the information. Therefore, we will not address your argument regarding exhibit 7.

We will first address your argument that section 552.117 excepts from disclosure portions of the information you submitted for review. In pertinent part, section 552.117 excepts from disclosure the home addresses and telephone numbers of all peace officers, as defined by article 2.12 of the Code of Criminal Procedure, and the home addresses and telephone numbers of all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold any home address or telephone number of a peace officer that appears in the requested documents. In addition, section 552.117 requires you to withhold any home address or telephone number of an official or employee who requested that this information be kept confidential under section 552.024. You may not, however, withhold the home address or telephone number of an official or employee who made the request for confidentiality under section 552.024 after this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

Next, we address your claim that the social security number revealed in exhibit 9 is excepted from disclosure by section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). In relevant part, the 1990 amendments to the federal Social Security Act make confidential social security account numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). You claim that the social security number revealed in exhibit 9 is confidential because the individual became a city employee after October 1, 1990. We note, however, that hiring an individual after October 1, 1990, is not the same as obtaining an individual's social security number pursuant to a law enacted on or after October 1, 1990. For example, an employer is required to obtain a new employee's social security number for tax purposes under a law that predates October 1, 1990, and thus, a social security number obtained under this law is not made confidential by the 1990 amendments to the Social Security Act. Based on the information that you have provided, we are unable to determine whether the social security number at issue here is confidential under federal law. On the other hand, section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing *any* social security number contained in these documents, you should ensure that it was not obtained pursuant to a law enacted on or after October 1, 1990.

You also contend that common-law privacy makes exhibit 6 and portions of exhibit 8 confidential under section 552.101 of the Government Code. These exhibits contain medical information about two employees. A governmental body must withhold information under common-law privacy if the information (1) is highly intimate or embarrassing so that its release would be highly objectionable to a person of ordinary

sensibilities and (2) is of no legitimate interest to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Certain kinds of medical information about an individual generally satisfy this test. Open Records Decision No. 478 (1987) at 3. In this case, we conclude that you must withhold the information we have marked in exhibits 6 and 8 under common-law privacy. We disagree, however, with your contention that all of exhibit 6 may be withheld. Even if the incident discussed in that exhibit is related to a former employee's medical condition, the events and the city's response is of legitimate interest to the public.

Common-law privacy also prohibits you from releasing the criminal history record information contained in exhibits 10, 11, 12, 14, and 15(B). Common-law privacy prevents the dissemination of criminal history record information obtained from the National Crime Information Center ("NCIC") or from the Texas Crime Information Center ("TCIC") to someone other than the subject of the information. See *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See also Gov't Code §§ 411.081-.127 (governing access to criminal history record information obtained from the Department of Public Safety). We conclude that all of exhibits 10 and 12 and the marked portions of exhibits 11, 14, and 15(B) constitute criminal history record information. Therefore, you must withhold this information under section 552.101.

You argue that exhibits 4 and 5 are excepted from disclosure under section 552.103(a). Section 552.103(a) excepts from required public disclosure information "relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party." To secure the protection of section 552.103(a), a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated and that the requested information relates to that proceeding. Open Records Decision No. 555 (1990) at 2. However, information cannot be withheld under section 552.103 if the opposing party in the litigation has previously had access to it; absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Furthermore, if the requested records include an offense report, the type of information normally found on the first page of an offense report generally cannot be withheld under section 552.103(a) after the suspect has been informed of the charges. Open Records Decision No. 597 (1991) at 3.

We conclude that you may withhold portions of exhibits 4 and 5 under section 552.103(a). You indicate that the investigations recorded in both exhibits resulted in criminal charges being filed and that the cases are still pending. Thus, you have established that the documents are related to pending litigation. In both cases, however, the records clearly indicate that the suspects are aware of the charges against them.

Therefore, you must release the information generally found on the first page of the offense report in both exhibit 4 and exhibit 5. Some of the records also demonstrate that the opposing party has had access to them. For example, both exhibits contain statements signed by the opposing party. We have marked the documents that demonstrate on their face that the opposing party has had access to them. You may not withhold these documents or any other documents to which the opposing parties have had access. You may, however, withhold the remaining information in exhibits 4 and 5 under section 552.103(a).

Finally, you argue that section 552.108(a) excepts exhibits 13, 15(A), and 16 from required public disclosure because they relate to active investigations. Section 552.108(a) excepts from required public disclosure “[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime” For cases that are still under active investigation or prosecution, section 552.108(a) may be invoked to except from disclosure all information except that generally found on the first page of the offense report. Open Records Decision No. 611 (1992) at 2. Information found on the first page of the offense report may be withheld only if the governmental body demonstrates that releasing the information would unduly interfere with law enforcement. Open Records Decision No. 508 (1988) at 2. In this case, you have not demonstrated that releasing the information generally found on the first page of the offense report would unduly interfere with law enforcement. Therefore, you may withhold all the information in exhibits 13, 15(A), and 16 except the information generally found on the first page of the offense report.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Records Division

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Ref.: ID# 25495

Enclosures: Marked documents

cc: Mr. Jay D. Root
The Houston Post
P.O. Box 4747
Houston, Texas 77210-4747
(w/o enclosures)

Mr. William J. Golden
2603 Magnolia
Houston, Texas 77568
(w/o enclosures)