



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1997

Mr. Patrick S. Dohoney  
Assistant District Attorney  
Office of the Criminal District Attorney  
Tarrant County  
Justice Center  
401 W. Belknap  
Fort Worth, Texas 76196-0201

OR97-0665

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 36618 and ID# 37278.

The Tarrant County Sheriff's Department, the Tarrant County District Attorney's Office, and the Tarrant County Hospital District (collectively, "the governmental bodies") each received requests for information relating to the incarceration of Takela Tychealla Hart. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.222 of the Government Code. You have submitted a sample of the requested information. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

You first claim that, as the governmental bodies who received these requests asked the requestor for clarification pursuant to section 552.222(b) of the Government Code and the requestor did not clarify his requests, the governmental bodies need not comply with the requests. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the governmental bodies must make a good-faith effort to relate the request to information in their possession and must help the requestor to clarify his requests by advising him of the types of information available. See Open Records Decision No. 87 (1975) (request for records may not be disregarded simply because citizen does not specify exact documents he desires); Gov't Code § 552.222(b).

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The governmental bodies have the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The governmental bodies must meet both prongs of this test for information to be excepted under section 552.103(a).

Although a lawsuit was pending between the former inmate and the Tarrant County Sheriff's Department at the time these requests were received, the lawsuit was subsequently dismissed. The time for appeal under Rule 4(a) of the Federal Rules of Civil Procedure has expired. As the Final Judgment was signed on November 9, 1995, you tell us that the plaintiff could appeal the judgment until November 9, 1996, pursuant to Rule 60 of the Federal Rules of Civil Procedure. However, as that deadline has now passed and you have not informed this office that an appeal was taken, we conclude that section 552.103 does not except the requested information from disclosure. See Open Records Decision No. 638 (1996).

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by

a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. We have reviewed the submitted information and conclude that it is not "privileged information" and, therefore, may not be withheld under section 552.107(1).

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses both common-law and constitutional privacy.<sup>2</sup> For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law 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.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). 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.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

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<sup>2</sup>One of the requests for information indicates that Ms. Hart signed an authorization for release of information about her to the requestor. However, no such authorization has been submitted to this office for review. If Ms. Hart has consented to release of the requested information, her privacy interests would not be implicated and the governmental bodies may not withhold the information we conclude would otherwise be protected by privacy. Open Records Decision No. 481 (1987) (privacy interests arise only in context of particular individual vis-a-vis others and are not implicated where only person himself is concerned). However, as we do not have a copy of an authorization, we address the privacy issues involved with regard to Ms. Hart.

This office has previously concluded that information concerning an inmate's correspondents and visitors is protected from disclosure by constitutional privacy. Open Records Decision No. 430 (1985) (visitors), 428 (1985) (correspondents), 185 (1978) (correspondence list). This information must be withheld under constitutional privacy. Similarly, information about sums deposited to jail inmates' trust accounts, and the total amount of such funds, are protected from disclosure by common law privacy, as such information does not relate to the expenditure of public funds and there is not sufficient legitimate public concern with such information to overcome an inmate's right of privacy about her affairs. Open Records Decision No. 396 (1983). However, if the documents relate to a transaction between the inmate and a governmental body, the information is not protected by privacy. Open Records Decision No. 396 (1983) (information regarding inmate's financial transactions with jail commissary not excepted from disclosure by common law privacy because involves receipt or expenditure of public funds). We are unable to determine if some of the submitted information relates to this inmate's trust account or if the documents reflect financial transactions between a governmental body and the inmate. If this information relates to the inmate's trust account, the information must be withheld under common law privacy. If the information relates to a transaction between a governmental body and the inmate, the information may not be withheld. We have marked these documents for your information. We have also marked additional information in the submitted documents that must be withheld under privacy.

We note that some of the submitted information is also protected by section 552.101 of the Government Code. Generally, criminal history report information ("CHRI") is confidential and not subject to disclosure. Section 552.101 encompasses information protected by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. 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."), (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."). Section 411.087 of the Government Code provides that any CHRI obtained from other criminal justice agencies is confidential, subject to certain exceptions.<sup>3</sup> We cannot ascertain the origin of some of the information contained in this file. If it falls within the categories set out above, it must be withheld under section 552.101. If it does not, it still may be confidential under a right of privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). If this information has been compiled by the governmental body, it

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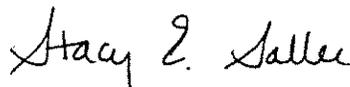
<sup>3</sup>We note that Ms. Hart may be able to obtain any CHRI about herself that is maintained by the Department of Public Safety from that agency. Gov't Code § 411.083(b)(3).

must be withheld under privacy.<sup>4</sup> If it does not fall within any of these categories, then the information may not be withheld. We have marked this information for your convenience.

Federal law may prohibit disclosure of this inmate's social security number. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security number is confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. The remaining information may not be withheld from required public disclosure.

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 should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/glg

Ref.: ID# 36618 and ID# 37278

Enclosures: Marked documents

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(w/o enclosures)

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<sup>4</sup>Again, if there is an authorization from Ms. Hart for release of the information, the governmental bodies may not withhold the information under a right of privacy under *Reporter's Committee*.

