



February 24, 1999

Ms. Katheryn H. West  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR99-0533

Dear Ms. West:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122527.

The City of Dallas Police Department received a request for internal affairs records pertaining to a named police officer. You seek to withhold portions of the requested information under section 552.101 of the Government Code.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

We note initially, that some of the information consists of court records, which are public in nature and must be released in their entirety. *See, Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Otherwise, since the records you submitted relate to an alleged sexual assault, you must withhold information -- name, address, etc. -- which identifies the complainant. *See* Open Records Decision No. 339 (1992). Also, we have marked other information which we believe is protected from disclosure by common-law privacy and thus must be withheld.

Section 552.101 also protects information made confidential by statute. The Texas Medical Practice Act, V.T.C.S. article 4495b, provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are

confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). We have marked the documents that you must withhold pursuant to article 4495b.

We have also marked criminal history information (“CHRI”) which is exempt from public disclosure pursuant to section 552.101. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which 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 (the “DPS”) maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov’t Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). 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 the information 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 the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). 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.

Except as noted above, you must release the requested information. 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ch

Ref:: ID# 122527

Enclosures: Marked documents

cc: Ms. Catherine Davis  
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(w/o enclosures)