



July 26, 2000

Mr. Charles M. Allen, II
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2000-2823

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137490.

The City of Richardson Police Department (the "department") received a request for information related to calls for service in a specified area during a specified period. You indicate that you have released some of the requested information. You seek to withhold information from files 00-7039 and 00-92-68. You have submitted this information to this office for review. You also submit materials which indicate that you have released a redacted version of file number 00-7039 and the "front page" information from file number 00-92-68. You claim that the submitted information is excepted from disclosure by section 552.108(b) of the Government Code and by "statutory exception." We have considered the exceptions you claim and reviewed the submitted information.

We first note that you have previously released portions of the submitted information. As the Government Code requires that requests for information be treated uniformly, any non-confidential information previously released must be released to this requestor. *See Gov't Code § 552.223.*

The responsive information that has not been previously released is subject to your assertion that section 552.108(b) of the Government Code applies. This section reads:

An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or
- (3) the internal record or notation:
 - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
 - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You do not cite the specific exception in this subsection that you contend applies to the submitted information, but relate that this information consist in part of "law enforcement records which dealt with the investigation of a crime and did not result in a conviction or deferred adjudication." We construe your argument to invoke subsection(b)(2).

This exception applies only to criminal investigations or prosecutions which *concluded* in a result other than a conviction or deferred adjudication.¹ You do not indicate what, if any, final result was reached in the subject investigations. The report in case number 00-9268 indicates that a recommendation was made that this investigation be "inactivated pending new leads." There is no indication that a final result was reached. This report notes the crime under investigation as "Criminal Mischief (\$1,500 - 20,000)" and indicates that the incident occurred February 2, 2000. The offense of criminal mischief with pecuniary loss over \$1500 and under \$20,000 is a state jail felony. Penal Code § 28.03(b)(4). This felony is subject to prosecution for three years from the date of the commission of the offense. Code Crim. Proc. art. 12.021. As the criminal incident that is the subject of case number 00-9268 remains subject to prosecution, and there is no indication that this case has reached a final result, we conclude that you have not demonstrated that these file materials are excepted from disclosure by section 552.108(b)(2) of the Government Code. Further, there is no indication as to what, if any, crime was or is being investigated in file 00-7039. Nor is the disposition of this file explained. We also note that the majority of this file consists of "front page" information which has previously been released. We conclude that you have not demonstrated that section 552.110(b) excepts any of the responsive information from disclosure. Therefore, no information may be withheld under section 552.108(b).

¹More specifically, this exception applies to internal records. Ongoing cases are excepted from disclosure under 552.108(a)(1). Finalized investigations that did not result in conviction or deferred adjudication and that are not used for internal purposes are excepted from disclosure under section 552.108(a)(2).

Government Code section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You indicate that the submitted materials include information received from “TCIC.” Apparently you refer to the Texas Crime Information Center. Criminal history record information generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. 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 Department of Public Safety (“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(o)(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. 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. Although, from our review of the submitted materials we cannot identify any information that appears to be CHRI, you must withhold any CHRI that you have obtained from the Texas Crime Information Center under section 552.101 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ljp

Ref: ID# 137490

Encl Submitted documents

cc: Mr. Bill Strother
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(w/o enclosures)