



January 30, 2001

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2001-0358

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143755.

The Tarrant County Narcotics Intelligence Task Force (the "task force") received a request for copies of any and all information pertaining to a search warrant and subsequent arrest of two specified persons. You state that you have released documents to the requestor which were submitted to us as Exhibit F. You claim that the remaining responsive information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

First, we note that Exhibit F contains an affidavit for evidentiary search warrant. If the search warrant has been executed, the supportive affidavit is made public by statute. *See* Code Crim. Proc. art. 18.01(b). Since the search warrant has been properly executed, the task force must release the affidavit it *in its entirety*. We note that the search warrant affidavit contains redacted information. As a general rule, exceptions to required public disclosure provided in the Public Information Act (the "Act") are inapplicable to information made expressly public by other statutes. *See* Open Records Decision No. 623 (1994). Therefore, the redacted information in the search warrant affidavit must be released. We have marked the search warrant affidavit that must be released in its entirety pursuant to article 18.01(b) of the Code of Criminal Procedure.

Most of the documents in Exhibit G are public under section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) requires the release of completed investigations made by governmental bodies. Information enumerated under section 552.022 of the Government Code is public information and “not excepted from required disclosure under [chapter 552 of the act] unless [it is] expressly confidential under other law.” Gov’t Code § 552.022(a). You raise section 552.103 of the Government Code as an exception to public disclosure of the information in Exhibit G. However, section 552.103 is a discretionary exception under the Act and is not “other law” that makes the requested information confidential. *See* Open Records Decision No. 551 (1990). Accordingly, pursuant to section 552.022(a)(1) of the Government Code, most of the documents in Exhibit G must be released to the requestor.

However, we note that one of the documents contains a copy of a driver’s license, a social security card, and a credit card number. 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). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security 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 id.* You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the task force to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I). We caution the task force, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers at issue, you should ensure that the number was not obtained or are maintained by the task force pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.130 of the Government Code excepts from public disclosure information relating to a driver’s license or motor vehicle title or registration issued by an agency of this state. Thus, you must withhold the copy of the Texas driver’s license contained in the submitted files.

We also note that the credit card number information is protected from disclosure under section 552.101 of the Government Code. This section encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is excepted from required public disclosure by a common law right of privacy if the information (1) 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. *Industrial Found.*, 540 S.W.2d 668. This office has previously held that an individual’s personal financial information may be protected by common law privacy. *See generally* Open Records Decision No. 600 at 9-12 (1992). An

individual's credit card number is information that is highly intimate and of no legitimate interest to the public. *See* Open Records Decision No. 373 (1983). Therefore, the task force must withhold the credit card number pursuant to section 552.101 of the Government Code in conjunction with the common law right of privacy.

Next, we consider your claim that section 552.108 of the Government Code excepts the documents in Exhibits J and M from public disclosure. Section 552.108(a)(2) states that 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 it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." Gov't Code § 552.108(a)(2). You inform us that the case against one of the specified individuals, case number 0703882, was dismissed. Based on your representation, we conclude that section 552.108(a)(2) is applicable to the documents in Exhibits J and M.

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c); *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); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information, you may withhold the information in Exhibits J and M from disclosure based on section 552.108(a)(2) of the Government Code.¹

You also claim that the documents in Exhibit N are excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") 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(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

¹We note that some documents in Exhibit G are also contained in Exhibit J. Therefore, based on our analysis of Exhibit J, you may withhold the corresponding documents in Exhibit G.

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. The information submitted for our review in Exhibit N is CHRI generated by TCIC and NCIC. Accordingly, the information in Exhibit N is excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Finally, you contend that the documents submitted as Exhibit O are not subject to the Act as they are records of the grand jury. The Act does not apply to information within the actual or constructive possession of the grand jury. *Open Records Decision No. 513 (1988).* When an individual or entity acts as the grand jury's agent, information prepared or collected by the agent is within the grand jury's constructive possession. *Id.* Based on your representation that the documents in Exhibit O were obtained pursuant to a grand jury subpoena, we conclude that they are not subject to the Act. *See Gov't Code § 552.003.*

In summary, the search warrant affidavit in Exhibit F must be released in its entirety pursuant to article 18.01(b) of the Code of Criminal Procedure. All documents in Exhibit G must be released pursuant to section 552.022(a)(1) of the Government Code, except for one document which contains a copy of a driver's license, a social security number and a credit card number. The driver's license information is excepted from public disclosure pursuant to section 552.130 of the Government Code. The credit card number is excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy. The social security number may be excepted from public disclosure if it was obtained or is maintained by the task force pursuant to any provision of law enacted on or after October 1, 1990. The documents in Exhibits J and M are excepted from public disclosure pursuant to section 552.108(a)(2) of the Government Code. The documents in Exhibit N are excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. Lastly, the documents in Exhibit O are not subject to the Act.

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).

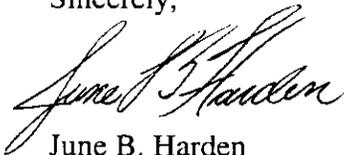
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/rjb

Ref: ID# 143755

Encl. Submitted documents

cc: Ms. Debbie Gardner
502 Pearl
Keller, Texas 76248
(w/o enclosures)