



May 9, 2001

Mr. John Steiner
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2001-1899

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146957.

The City of Austin (the "city") received a request for the internal affairs files related to an investigation of the requestor, a former Park Police Officer. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You inform us that portions of the submitted information were received by the city's police department from the Travis County Sheriff's Department (the "sheriff"). You relate that in sharing this information with the city the sheriff specifically reserved the applicable exceptions to disclosure. Thus, we understand the city to be asserting the law enforcement interests of the sheriff for the information that the city obtained from the sheriff.

Information may be transferred between governmental bodies that are subject to the Public Information Act without waiving the exceptions that may apply to that information. *See, e.g.,* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are grounded in the well-settled policy of the state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of their duties. *See* Open Records Decision No. 516 (1989). These decisions also recognize that a release of information from one governmental body to another governmental body is not a release to the public for purposes of Government Code section 552.007, which prohibits the selective disclosure of information, or Government Code section 552.352, which provides criminal penalties for the release of information considered to be confidential. *See id.* Therefore, we believe that the interests of the sheriff in the transferred materials are not defeated by the transfer. *See* Open Records Decision No. 183 at 5 (1978); *see also* Open Records Decision No. 586 (1991).

In response to a request for a specified investigation file, the sheriff asserted section 552.108 to protect the responsive information from required public disclosure. In Open Records Decision Letter 2001-1744 (2001) this office concluded that the sheriff had established that agency's section 552.108 interest in most of these materials. The materials submitted by the sheriff included medical records, which must be released only in compliance with chapter 159 of the Occupations Code, the Medical Practice Act. The materials also include documents that are filed with a court and are thus made public by section 552.022(a)(17) of the Government Code and must be released. Finally, the materials include "basic" information concerning an investigated criminal offense that resulted in an arrest. This "basic information" is not excepted from disclosure by section 552.108, and must therefore be released. Gov't Code § 552.108(c). We note that the materials that you have identified as "Travis County IAD File 95-33," and placed under tab F4, include most, but not all of the information that the sheriff previously submitted to this office. You have also placed under this tab information that was not previously submitted to this office by the sheriff. We have marked the information submitted under tab F4 that was not submitted to this office by the sheriff. That information was not found to be excepted from disclosure. Except for this information and "basic information," which we have also marked, the sheriff demonstrated its law enforcement interest to this office in withholding the balance of the information that you have submitted under tab F4.

The need of a governmental body other than the governmental body seeking to withhold information may establish the applicability of section 552.108. *See, e.g.*, Open Records Decision Nos. 586 (1991), 183 (1978). You may, therefore, withhold the information found to be excepted from disclosure by section 552.108 in the materials that were transferred to the Austin Police Department from the Travis County Sheriff's Department.¹

As concerns the remaining information, we now consider the exceptions that you have raised. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information may be withheld under this exception as protected by the common law right of privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Generally the identity of a victim or complainant may not be withheld, however, information tending to identify victims of serious sexual offenses must be withheld from public disclosure. Open Records Decision Nos. 339 (1982), 393(1983). We have marked information that is protected by the right of privacy. The marked information must be withheld under section 552.101 of the Government Code. We also note that disclosure of some of this information to the public would violate the right of privacy of the requestor. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general

¹We enclose a copy of ORL 2001-1744.

public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interest. Therefore, section 552.023 provides the requestor a special right of access to the information pertaining to the requestor.² We have marked the information which may be released only to the requestor.

Section 552.101 also excepts from public disclosure information made confidential by statute. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history record information ("CHRI") which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains. 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. We have marked CHRI in the submitted materials. This information must be withheld under section 552.101 of the Government Code.

You also assert that the submitted materials are excepted in their entirety by section 552.108 because the investigation "has not resulted in a conviction or deferred adjudication." Section 552.108 (a)(2) of the Government Code excepts from public disclosure information held by a law enforcement agency or prosecutor 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. Unless information relating to a criminal investigation or prosecution *concluded* in a result other than a conviction or deferred adjudication, it may not be withheld under section 552.108(a)(2). As you do not inform this office of the status of this investigation, we cannot determine that a criminal investigation or prosecution has concluded. Further, various portions of the submitted materials indicate that this investigation was an "administrative inquiry" rather than a criminal investigation, and you do not attest that this internal affairs investigation was conducted as a criminal investigation. Where no criminal investigation results from an internal affairs investigation, section 552.108 is not implicated. *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to section 552.108 not applicable where no criminal investigation resulted). A governmental body claiming an exception under section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code* §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We conclude that you have not made the required demonstration.

²Because the information to be released under section 552.023 is confidential with respect to the general public, if the commission receives a future request for this information from an individual other than the requestor or her authorized representative, the commission should again seek our decision.

Summarizing, the city may withhold the information obtained from the sheriff and found by this office to be excepted from disclosure by section 552.108. The city must withhold the information that we have marked as protected by the common law right of privacy and the information we have marked as Criminal History Report Information. The remaining information must be released to this requestor.

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).

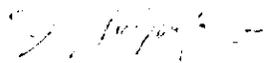
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/sdk

Ref: ID# 146957.

Encl: Submitted documents
ORL 2001-1744

cc: Mr. Brian K. Robinson
10737 Marshitas Way
Austin, Texas 78748
(w/o enclosures)