



October 10, 2001

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

OR2001-4590

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# 153120.

The City of Richardson Police Department (the "department") received requests for all arrest reports pertaining to violations of section 38.02 of the Texas Penal Code for the month of January 2001, as well as information regarding the arrests of five named individuals. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. Conversely, the requestor has submitted arguments in support of the release of the requested information. *See* Gov't Code § 552.304. We have considered all of the submitted arguments and reviewed the submitted information.

We begin by addressing the requestor's argument that the department did not comply with section 552.301(d) of the Government Code. Section 552.301(d) provides:

(d) A governmental body that requests an attorney general decision [to withhold information from public disclosure] must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

The requestor acknowledges that the department sent him a copy of its August 1, 2001 correspondence with this office. Nevertheless, the requestor contends that the department failed to comply with either prong of section 552.301(d). We believe that the August 1 correspondence was sufficient to put the requestor on notice that the department was seeking a decision from this office concerning whether the information he requested is excepted from disclosure under section 552.103 of the Government Code. Furthermore, we believe that the department complied with section 552.301(d)(2) by forwarding the August 1 correspondence to the requestor as it was the written communication in which the department sought a decision from this office. Therefore, we find that the department adequately complied with section 552.301 of the Government Code.

On the other hand, the department did not fully comply with section 552.301(e) of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Although you submitted information responsive to the requests regarding the five named individuals, we do not believe you have submitted information responsive to the request for arrest reports from the month of January 2001. Rather, it appears that you have submitted a daily log listing some of the details of the arrests for that month. We do not believe that this is responsive to the request for "arrest reports."

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.103 is a discretionary exception and, therefore, cannot provide a compelling reason for overcoming the presumption of openness. Therefore, you may not withhold the requested offense reports from the month of January 2001 under section 552.103. *See Open Records Decision No. 551 (1990)*. Nevertheless, you must withhold social security numbers, driver's license information, vehicle identification numbers, and license plate numbers in the January 2001 offense reports as discussed below.

With respect to the submitted responsive information, we note that the information is subject to section 552.022. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108

Gov't Code § 552.022(a)(1). The submitted responsive information relates to completed investigations and therefore may only be withheld to the extent it is confidential under other law. Section 552.103 is not "other law" for the purpose of section 552.022. Therefore, you may not withhold the submitted information under section 552.103. However, portions of the submitted responsive information must be withheld from disclosure under sections 552.101 and 552.130 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The submitted information contains social security numbers that may be confidential pursuant 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.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is also 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 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 contains CHRI generated by TCIC and NCIC. Accordingly, this information, which we have marked, is excepted from required public disclosure by section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrines of common law and constitutional privacy. Common law privacy protects information 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. Furthermore, this office has found some kinds of medical information or information indicating disabilities or specific illnesses as well as personal financial information not relating to the financial transaction between an individual and a governmental body to be intimate and embarrassing for the purpose of common law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990), 470 (1987), 455 (1987)*. We have marked portions of the submitted information that are confidential under common law privacy and therefore must be withheld under section 552.101 of the Government Code.

Finally, some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold the Texas driver's license and license numbers, vehicle identification numbers, and license plate numbers contained in the requested reports under section 552.130.

In summary, you must withhold the marked criminal history record information in the submitted documents under section 552.101. You must also withhold other marked information in the submitted documents under section 552.101 and common law privacy. You must withhold social security numbers in any of the requested information to the extent the department obtained or maintained the numbers pursuant to a provision of law enacted on or after October 1, 1990. Finally, you must withhold the Texas driver's license and license numbers, vehicle identification numbers, and license plate numbers in any of the requested information under section 552.130 of the Government Code. You must release the remainder of the responsive information, including the responsive information submitted to this office and any information responsive to the request for offense reports from the month of January 2001.

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).

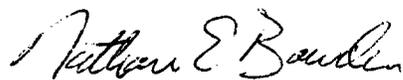
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 153120

Enc: Submitted documents

c: Mr. Frederick Hal Slice
2406 Diamond Oaks
Dallas, Texas 75044
(w/o enclosures)