



March 5, 2002

Mr. Noble D. Walker, Jr.
Scott, Walker, Morgan & Bench, L.L.P
P.O. Box 1353
Greenville, Texas 75403-1353

OR2002-1078

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159348.

The City of Greenville Police Department (the "department"), which you represent, received a request for copies of various documents pertaining to a specified sexual assault incident. You state that you have released Exhibit F to the requestor. See Gov't Code § 552.108(c) (stating that basic information regarding crime is not excepted from disclosure under Gov't Code § 552.108; see also *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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). You claim, however, that portions of the submitted information are excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the entirety of Exhibit D and the videotape and portions of Exhibits B and G, which you have underlined in blue, are excepted from disclosure pursuant to section 552.108. Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why release of the

requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).*

You state that the case associated with this incident was presented to the Hunt County grand jury and was subsequently "no billed." However, you also state that because the statute of limitations has not yet run, this matter could be presented to the grand jury for prosecution at a later date should additional evidence surface. We, thus, understand you to argue that the case associated with the submitted information is still pending. Based on our review of your arguments, the entirety of Exhibit D and the videotape, and the portions of Exhibits B and G that you have underlined in blue, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. Accordingly, the department may withhold this information from disclosure pursuant to section 552.108 of the Government Code. It is not clear, however, that the department seeks to withhold the remaining portions of Exhibits B and G from disclosure under section 552.108. Furthermore, the department does not demonstrate how the release of these remaining portions would interfere with the detection, investigation, or prosecution of crime. Consequently, we conclude that the department may not withhold the remaining portions of Exhibits B and G from disclosure pursuant to section 552.108 of the Government Code.

We note that Exhibits B and C contain social security numbers of persons other than the requestor. 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).¹ *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 department to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security numbers in Exhibits B and C are confidential under section 405(c)(2)(C)(viii)(I). We caution the department, 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 in Exhibits B and C, the department should ensure that the numbers were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

You also claim that the remaining portions of Exhibit C and the entirety of Exhibit J are excepted from disclosure pursuant to section 552.101 in conjunction with chapter 411 of the Government Code. We note that criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected from disclosure by other statutes.

Center (“TCIC”) is confidential. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. *See* Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *See id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). The definition of CHRI does not include driving history record information maintained by the department under Subchapter C of Chapter 521 of the Transportation Code. Based on our review of your arguments and the information in Exhibits C and J, we find that portions of Exhibit C contain CHRI that is confidential under chapter 411 of the Government Code. However, we do not find that Exhibit J contains any such information. Accordingly, we conclude that the department must withhold the CHRI that we have marked in Exhibit C from disclosure pursuant to section 552.101 in conjunction with chapter 411 of the Government Code. *See id.*; *see also* Gov’t Code § 411.106(b), .082(2) (defining criminal history record information). However, the department may not withhold any portion of Exhibit J from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

You also claim that Exhibit H is excepted from disclosure pursuant to section 552.101 in conjunction with section 1703.306 of the Occupations Code. Pursuant to section 1703.306, information acquired from a polygraph examination may not be disclosed, unless it falls into one of that section’s narrow exceptions. Section 1703.306 provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member’s agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner’s activities;
- (4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

Occ. Code, § 1703.306. Based on our review of your arguments and Exhibit H, it does not appear that any of the exceptions in section 1703.306 apply in this case. Accordingly, we conclude that the department must withhold from disclosure the information in Exhibit H that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

You also claim that telephone numbers and addresses in Exhibit I are excepted from disclosure pursuant to section 552.101 in conjunction with chapter 772 of the Health and Safety Code. We assume that the emergency 911 district involved here was established in accordance with chapter 772, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *See Open Records Decision No. 649 (1996)*. Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. *See Health & Safety Code § 772.401, et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318 of the Health and Safety Code, the originating telephone numbers and addresses in Exhibit I are excepted from disclosure pursuant to section 552.101 in conjunction with chapter 772 of the Health and Safety Code.

You also claim that portions of Exhibit B which you have underlined in red are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130*. Accordingly, the department must withhold most of the information that it has underlined in red in Exhibit B from disclosure pursuant to section 552.130. However, one of the driver's license numbers that the department underlined in red in Exhibit B is the Texas driver's license number of the requestor. Accordingly, the department must release that number to the requestor pursuant to section 552.023 of the Government Code. *See Gov't Code § 552.023(a); see also Open Records Decision No. 481 at 4 (1987)*. We have also marked some Texas driver's license information in Exhibit C that must be withheld from disclosure pursuant to section 552.130 of the Government Code.

We note that you do not claim any exception to disclosure with regard to Exhibit E. Accordingly, we conclude that the department must release Exhibit E to the requestor in its entirety. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision*

No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Finally, we note that the remaining information includes information that tends to identify the victim of an alleged sexual assault. Generally, information which tends to identify a victim of an alleged sexual assault is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy.² See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In this case, however, the requestor is the alleged victim of the sexual assault. Therefore, we conclude that the department may not withhold any victim-identifying information from disclosure contained throughout the remaining information pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a) (providing that individual has limited special right of access to information when only basis for excepting information from disclosure involves protection of same individual's privacy interest); see also Open Records Decision No. 481 at 4 (1987) (stating that privacy theories not implicated when individual asks governmental body to provide her with information concerning herself).³ We have, however, marked information in Exhibit H that would implicate the privacy interests of an individual other than the requestor. The department must withhold this information from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (stating that information that is intimate and embarrassing must be withheld from disclosure if no legitimate public interest in information exists); see also Open Records Decision No. 455 at 5 (1987) (pertaining to information concerning prescription drugs, illnesses, operations, and physical handicaps).

In summary, the department may withhold from disclosure the entirety of Exhibit D and the videotape and the portions of Exhibits B and G that you have underlined in blue pursuant to section 552.108 of the Government Code. Social security numbers of persons other than the requestor that are contained within Exhibits B and C may be confidential pursuant to federal law. The department must withhold the CHRI that we have marked in Exhibit C pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The department must withhold from disclosure the information in Exhibit H that we have marked pursuant to section 552.101 in conjunction with section 1703.306 of the Occupations Code. If the emergency communication district here is subject to section 772.118, 772.218 or 772.318 of the Health and Safety Code, the originating telephone numbers and addresses in Exhibit I are excepted from disclosure pursuant to section 552.101 in conjunction with chapter 772 of the Health and Safety Code.

² Section 552.101 of the Government Code also encompasses the common-law right to privacy.

³ However, we note that should the department receive another request for this same information from a person who would not have a special right of access to it under section 552.023, the department should resubmit this information to our office for review through another request for decision.

The department must withhold most of the information that it has underlined in red in Exhibit B from disclosure pursuant to section 552.130 of the Government Code. However, one of the driver's license numbers that the department underlined in red in Exhibit B is the Texas driver's license number of the requestor. Accordingly, the department must release that number to the requestor pursuant to section 552.023 of the Government Code. The department must also withhold Texas driver's license information that we have marked in Exhibit C from disclosure pursuant to section 552.130. The department must withhold from disclosure the information that we have marked in Exhibit H pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department must release the remaining information to the 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).

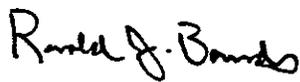
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 159348

Enc. Marked documents

cc: Ms. Gloria Davis
2003 Wellington Street
Greenville, Texas 75401
(w/o enclosures)