



May 14, 2002

Mr. John Feldt
Assistant District Attorney
Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2002-2539

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162882.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for (1) all district attorney files that involve a named individual, including information relating to a family violence case, and (2) all district attorney files on all defendants whose assault cases have been dismissed since 1/1/2000 via plea in bar. You indicate that the district attorney has released some of the information that is responsive to the first part of the request and information that is responsive to the second part. You claim that the remaining information that is responsive to the first part of the request is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Initially, we address the request for "all district attorney files" that pertain to the named individual. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information regarding a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same

information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

In part, this request is for unspecified prosecutorial records that pertain to a named individual. That aspect of this request implicates the individual's right to privacy. Therefore, to the extent that the district attorney maintains any law enforcement records that depict this individual as a suspect, arrestee, or defendant, apart from those that relate to the family violence case to which the request for information refers, the district attorney must withhold all such records in their entirety under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Section 552.101 of the Government Code also encompasses information that is made confidential under other statutes. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code. Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *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.") and (c)(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."); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code 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. *See* Gov't Code § 411.089(b). Any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Any CHRI obtained from the Texas Department of Public Safety (the "DPS") or another criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code. Therefore, any criminal history record information obtained from the NCIC or TCIC networks must be withheld from disclosure under section 552.101 of the Government Code.

Next, we note that section 552.022 of the Government Code is applicable to the information submitted as Exhibit D. Section 552.022 provides that

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:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The information submitted as Exhibit D also is contained in a public court record. Therefore, the district attorney must release Exhibit D under section 552.022, except to the extent that it contains information that is expressly confidential under other law.

The district attorney notes that Exhibits C and D contain social security numbers. A social security number may be confidential under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). However, it is not apparent to this office that the social security numbers in Exhibits C and D were obtained or are maintained pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district attorney to obtain or maintain a social security number. Therefore, we have no basis for concluding that these social security numbers were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing a social security number, the district attorney should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

You also note that Exhibits C and D contain Texas driver's license and license plate numbers. Section 552.130 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] 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[.]

Gov't Code § 552.130(a)(1)-(2). The district attorney must withhold the Texas driver's license and license plate numbers that appear in Exhibits C and D under section 552.130.

Next, we address the district attorney's claim with regard to Exhibits F, G, and H under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . 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[.]” A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

Section 552.108(a)(2) is applicable to information that relates to a concluded case that did not result in a conviction or a deferred adjudication. You state that Exhibits F and G and the bracketed portions of Exhibits H-1 through H-9 relate to the family violence case to which this request for information refers. You inform us that the family violence case was disposed of by a plea in bar under section 12.45 of the Penal Code. You explain that under a plea in bar, future prosecution for a specific instance of conduct is barred by law, provided that a judge lawfully takes into account an admitted offense when determining sentence for an offense for which a defendant stands adjudged guilty. You state that the family violence charge was taken into consideration in sentencing the individual who was charged with that offense in a separate case that involved driving while intoxicated. You assert that the information pertaining to the family violence case is therefore information that relates to a concluded investigation that did not result in a conviction or a deferred adjudication. You represent to this office that Exhibits F and G and the bracketed portions of Exhibit H relate exclusively to the family violence case and not to the charge of driving while intoxicated. You also indicate that the district attorney has released basic information relating to the family violence case. *See* Gov’t Code § 552.108(c); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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 at 3-4 (1976). Based on your representations, we conclude that section 552.108(a)(2) is applicable to Exhibits F and G and the bracketed portions of Exhibits H-1 through H-9. Therefore, the district attorney may withhold that information under section 552.108 of the Government Code.

In summary, any law enforcement records maintained by the district attorney that depict the named individual as a suspect, arrestee, or defendant, apart from the records that relate to the family violence case, must be withheld in their entirety under section 552.101 of the Government Code in conjunction with *Reporters Committee*. Any criminal history record information obtained from the TCIC or NCIC networks also must be withheld from disclosure under section 552.101. The social security numbers in Exhibits C and D may be excepted from disclosure under section 552.101 in conjunction with federal law. The Texas driver’s license and license plate numbers in Exhibits C and D must be withheld from disclosure under section 552.130 of the Government Code. Exhibits F and G and the bracketed portions of Exhibits H-1 through H-9 are excepted from disclosure under section 552.108. If the district attorney has not already released the rest of the submitted information, he must do so at this time.

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).

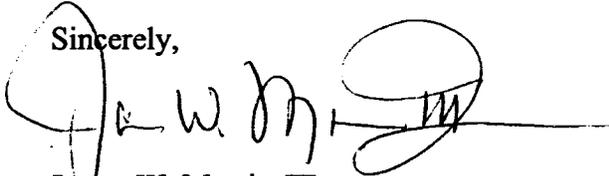
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 162882

Enc: Submitted documents

c: Mr. Brooks Egerton
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)