



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 12, 2003

Mr. Brad Norton
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City of Austin - Law Department
P. O. Box 1546
Austin, Texas 78767-1546

OR2003-3179

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180847.

The Austin Police Department (the "department") received a request for four categories of information relating to a particular incident. You claim that the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the entirety of the submitted videotape labeled "3003-0410029 02VT08625," as well as most portions of the submitted videotape labeled "3003-0410029," appear not to be responsive to the request as they do not pertain to the time frame specified by the requestor in his request for information. Accordingly, this ruling does not address the submitted videotape labeled "3003-0410029 02VT08625" or the nonresponsive portions of the submitted videotape labeled "3003-0410029."

We now address your section 552.108 claim regarding the remaining portion of the submitted videotape labeled "3003-0410029" and the submitted offense report. Section 552.108(a)(1) states 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). A governmental body that raises section 552.108 must reasonably explain, if the information does not explain on its face, how and why

section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986) (law enforcement agency must explain how release of particular records or parts thereof will interfere with law enforcement or prosecution). You explain that the information at issue relates to a pending investigation. However, after reviewing the submitted offense report, we note that the report indicates that the department has declared the investigation associated with this report "unfounded." Therefore, because the information contained within the submitted offense report contradicts the department's assertion, we find that the department has not adequately demonstrated that the release of the information at issue "would interfere with the detection, investigation, or prosecution of crime." *See* Gov't Code § 552.108(a)(1). Accordingly, we conclude that the department may not withhold the information at issue under section 552.108 of the Government Code.

However, we note that the submitted offense report contains a social security number which may be excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with federal law.¹ The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or 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* Open Records Decision No. 622 (1994). The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security number contained within the submitted offense report is confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. 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 this social security number, the department should ensure that it was not obtained and is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We also note that criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Federal regulations prohibit the release of CHRI maintained in state and local

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. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

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). Furthermore, where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy.² *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Accordingly, we conclude that the department must withhold the information that we have marked within the submitted offense report pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and the common-law right to privacy. *See id.*; *see also* Gov’t Code § 411.106(b), .082(2) (defining criminal history record information).

Further, we note that the submitted offense report contains Texas motor vehicle information that is 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, we conclude that the department must withhold the Texas motor vehicle information that we have marked within the submitted offense report pursuant to section 552.130 of the Government Code. The department must release the remaining portions of the submitted offense report to the requestor.

Finally, we note that the remaining responsive portion of the submitted videotape labeled “3003-0410029” contains images of peace officers. Section 552.119 of the Government Code excepts from disclosure a photograph of a peace officer that, if released, would

² Section 552.101 also encompasses information that is protected from disclosure by the common-law right to privacy. *See* Gov’t Code § 552.101.

endanger the life or physical safety of the officer unless one of three exceptions applies.³ The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. *See* Gov't Code § 552.119(a). This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. *See* Open Records Decision No. 502 (1988). We assume for purposes of this ruling that none of the exceptions described in section 552.119 applies in this instance and that none of the officers whose images are contained within the responsive portion of the videotape at issue has provided the department with the officer's consent to the release of the videotape. Accordingly, based on that assumption, we conclude that the department must withhold all images of peace officers that are contained within the responsive portion of the submitted videotape labeled "3003-0410029" pursuant to section 552.119 of the Government Code. The department must release the remaining images contained within the responsive portion of this videotape to the requestor.

In summary, a social security number contained within the submitted offense report may be confidential under federal law. The department must withhold the information that we have marked within the submitted offense report pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and the common-law right to privacy. The department must withhold the Texas motor vehicle information that we have marked within the submitted offense report pursuant to section 552.130 of the Government Code. The department must withhold all images of peace officers that are contained within the responsive portion of the submitted videotape labeled "3003-0410029" pursuant to section 552.119 of the Government Code. The department must release to the requestor all remaining information contained within the submitted offense report and the responsive portion of the submitted videotape labeled "3003-0410029."

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.

³ We note that the term "peace officer" is defined by article 2.12 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.12.

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 Dep't of Pub. 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

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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/lmt

Ref: ID# 180847

Enc. Marked documents and videotapes

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(w/o enclosures)