



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

August 12, 2003

Ms. Michele Austin
Assistant City Attorney
City of Houston - Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR2003-5586

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185792.

The City of Houston (the "city") received a request for "all records you are maintaining on [the requestor]." You claim that some of the requested information, or portions thereof, is 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 Exhibit 2 is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law informer's privilege.¹ We note that Texas courts have recognized the common-law informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The common-law informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978)*. It also protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279 at 2 (1981)* (citing *Wigmore, Evidence*, § 2374, at 767 (McNaughton rev. ed. 1961)). However, the report must be of a violation of a criminal or civil statute or law. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988)*. We also note that the privilege

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 the common-law informer's privilege.

excepts the informer's statement only to the extent necessary to protect that informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You explain that the complainant who is associated with the information in Exhibit 2 is a citizen who reported violations of a city ordinance involving neighborhood nuisances. You indicate that section 10-451(d) of the city's Code of Ordinances provides that whoever violates the ordinances shall be subject to various fines, including criminal penalties set out under state law. However, after carefully reviewing your representations and the information that the city has marked in Exhibit 2 as referencing the complainant in this matter, we note that the complainant is noted as the city and not a person. Thus, we find that the common-law informer's privilege is inapplicable in this instance. Accordingly, we conclude that the city may not withhold any portion of Exhibit 2 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Consequently, the city must release Exhibit 2 to the requestor in its entirety.

You claim that Exhibit 3 is excepted from disclosure pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. Section 552.101 also encompasses information that is protected from disclosure by other statutes. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Based on our review of your representations and Exhibit 3, we find that Exhibit 3 constitutes a report and investigation of alleged or suspected abuse as contemplated by chapter 261. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). We assume that the city's police department has not adopted a policy that would allow for the release of this information in this instance. Accordingly, we conclude that the city must withhold Exhibit 3 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also claim that Exhibit 4 is excepted from disclosure pursuant to section 552.101 in conjunction with chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime

Information Center 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). Further, when a governmental entity compiles CHRI pertaining to a particular individual, the compiled information takes on a character that implicates the individual's right of 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). After carefully reviewing your representations and Exhibit 4, we find that Exhibit 4 does not constitute information that is made confidential under chapter 411 of the Government Code. However, we also find that Exhibit 4 does constitute a compilation of the requestor's CHRI the release of which would normally implicate the requestor's common-law right to privacy pursuant to *Reporter's Committee*. We note, however, that the requestor has a special right of access to this information pursuant to section 552.023 of the Government Code. Section 552.023 gives a person or a person's authorized representative a special right of access, beyond the right of the general 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 interests. *See* Gov't Code § 552.023. Therefore, we find that no portion of Exhibit 4 is protected from disclosure under the common-law right to privacy. Accordingly, we conclude that the city may not withhold any portion of Exhibit 4 under section 552.101 of the Government Code in conjunction with the common-law right to privacy. Consequently, the city must release Exhibit 4 to the requestor in its entirety.

Finally, you claim that portions of Exhibits 5, 5A, and 5B are excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. 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) as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits 5, 5A, and 5B pertain to cases that are either under active criminal investigation or are inactive pending additional leads by the city's police department. Based on our review of your representations and these particular exhibits, we find that the release of most portions of this information "would interfere with the detection, investigation, or

prosecution of crime." Gov't Code § 552.108(a). Thus, we agree that section 552.108(a)(1) is applicable to this particular information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. See Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). See Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestor from throughout Exhibits 5, 5A, and 5B, we conclude that the city may withhold Exhibits 5, 5A, and 5B pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the city maintains the discretion to release all or part of that particular information that is not otherwise confidential by law. See Gov't Code § 552.007.²

In summary, the city must withhold Exhibit 3 pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information which must be released to the requestor from throughout Exhibits 5, 5A, and 5B, the city may withhold Exhibits 5, 5A, and 5B pursuant to section 552.108(a)(1) of the Government Code. The city must release the remaining submitted information to the requestor to the extent that it has not already done so.

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

² Because we base our ruling on sections 552.101 and 552.108 of the Government Code, we need not address your remaining claimed exception to disclosure.

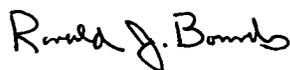
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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 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# 185792

Enc. Marked documents

c: Mr. John S. Dickerson, Jr.
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Houston, Texas 77047
(w/o enclosures)