



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

October 10, 2003

Mr. John Peeler  
Assistant General Counsel  
University of Houston  
311 E Cullen Building  
Houston, Texas 77204-2028

OR2003-7221

Dear Mr. Peeler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188809.

The University of Houston (the "university") received a request for information relating to a university police officer, including records of his detentions or arrests, copies of complaints made against the officer and of investigations made concerning any charges made against the officer, and a complete copy of the officer's file. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup>

We first note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in part 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:

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

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the university to withhold any information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Gov't Code § 552.022(a)(1). In this instance, the submitted information includes completed reports, evaluations, and investigations made of, for, or by a governmental body. The completed reports, evaluations, and investigations must be released under section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Section 552.103 is a discretionary exception to required public disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor does not implicate third-party rights and may be waived). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the university may not withhold any of the information that is subject to section 552.022(a)(1) under section 552.103.

Next, we address your claim under section 552.103 with regard to the information that is not subject to section 552.022. Section 552.103 provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information *and* (2) that the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.*

You inform us that the information that is not subject to section 552.022 relates to a pending prosecution in the 263<sup>rd</sup> Criminal District Court for Harris County. You assert that the university's police department is involved in the pending case in a law enforcement capacity. You do not inform us, however, that either the university or its police department was a party to the pending criminal case on the date of the university's receipt of this request for information. Likewise, you do not indicate that either the university or the police department expects to become a party to the case. Furthermore, you do not inform us that the prosecutor in the pending criminal case has asked the university or the police department to withhold any information that relates to the case. We therefore conclude that you have not demonstrated that section 552.103 is applicable to any of the submitted information that is not subject to section 552.022. *See* Gov't Code § 552.103(a); Open Records Decision No. 392 at 3 (1983) (statutory predecessor to Gov't Code § 552.103 applies only where litigation involves or is expected to involve governmental body that claims exception). Therefore, the university may not withhold any of the information that is not subject to section 552.022 under section 552.103.

You also contend that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is made confidential under federal and state law. 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 id.* 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). Thus, CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Likewise, CHRI held by the Texas Department of Public Safety or another criminal justice agency must be withheld from public disclosure as provided by subchapter F of chapter 411 of the Government Code. Furthermore, when a law enforcement agency compiles information that relates to a specific individual as a criminal suspect, arrestee, or defendant, the compilation of 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); Open Records Decision No. 616

at 2-3 (1993). Therefore, any criminal history information that was obtained from the NCIC or TCIC networks, or that is private under *Reporters Committee*, must be withheld from disclosure under section 552.101 of the Government Code in conjunction with federal law, subchapter F of chapter 411 of the Government Code, and *Reporters Committee*.

The submitted information also includes a document that is confidential under section 1701.306 of the Occupations Code. Chapter 1701 of the Occupations Code is applicable to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). Section 1701.306 provides in part:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306(a)-(b) (emphasis added). We have marked the information that the university must withhold under section 552.101 of the Government code in conjunction with section 1701.306 of the Occupations Code.

The university also claims that some of the submitted information is confidential under section 1701.454 of the Occupations Code. This section provides in relevant part:

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.

Occ. Code § 1701.454. Section 1701.454 is found in subchapter J of chapter 1701 of the Occupations Code. Section 1701.452, also found in subchapter J, requires a law enforcement

agency to submit a report to TCLEOSE regarding an officer licensed under chapter 1701 who resigns from the law enforcement agency. *See id.* § 1701.452. Thus, a form F-5, "Report of Resignation or Separation of License Holder," that was submitted to TCLEOSE is confidential under section 1701.454. In this instance, however, the submitted documents do not include a form F-5 or any other information that is made confidential under section 1701.454. Therefore, none of the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Sections 559.001, 559.002, and 559.003 of the Government Code govern the public availability of fingerprint information. These sections provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
  - (A) the individual consents to the disclosure;
  - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
  - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 559.001, 559.002, 559.003. We have marked the submitted information that is subject to section 559.003. Section 559.002 does not appear to permit the release of this information to this requestor. Therefore, the university must withhold the marked information under sections 552.101 and 559.003 of the Government Code.

We also note that the submitted information contains the social security numbers of members of the public. These social security numbers may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they were obtained or are maintained by a governmental body under any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the university to obtain or maintain a social security number. Thus, we have no basis for concluding that the social security numbers in question were obtained or are maintained under such a law and are therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352. Therefore, before releasing the social security numbers that we have marked, the university should ensure that they were not obtained and are not maintained pursuant to any provision of law enacted on or after October 1, 1990.

We next note that some of the remaining information is protected by the common-law right to privacy under section 552.101 of the Government Code. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information 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). Common-law privacy protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. See Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We

have marked information that the university must withhold under section 552.101 in conjunction with common-law privacy.

Certain types of personal financial information also are protected by common-law privacy under section 552.101. This office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (1990) (deferred compensation plan), 523 at 3-4 (1989) (certain financial information contained in loan files of veterans participating in Veterans Land Board programs), 373 at 3-4 (1983) (certain financial information contained in housing rehabilitation grant application files). We have marked the personal financial information that the university must withhold under section 552.101 in conjunction with common-law privacy.

You also claim that some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *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). You inform us that the information submitted as Exhibit K relates to a pending criminal case. Based on your representation, we find that section 552.108(a)(1) is applicable to the information in Exhibit K. *See 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) (court delineates law enforcement interests that are present in active cases).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The university must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The university may withhold the rest of the information in Exhibit K under section 552.108(a)(1).

You also believe that section 552.108(a)(2) may be applicable to some of the submitted information. Section 552.108(a)(2) excepts from public 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.[.]” Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You do not specifically inform us that any of the remaining information at issue relates to such a case. Therefore, you have not demonstrated that any of the remaining information is excepted from disclosure under section 552.108(a)(2).

You also seek to withhold portions of the submitted information under section 552.108(b)(1). Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet. h.) (Gov’t Code § 552.108(b)(1) protects information which, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would interfere with law enforcement because disclosure would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

A governmental body that relies on section 552.108(b)(1) must sufficiently explain how and why the release of the information at issue would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989); *see also* Open Records Decision Nos. 434 at 2 (1986) (circumstances of each case must be examined to determine whether release of particular information would interfere with law enforcement or crime prevention), 409 at 2 (1984) (whether disclosure of particular records will interfere with law enforcement or crime prevention must be decided on case-by-case basis). You inform us that the university police department believes that release of the information submitted as Exhibits C, D, and J could impair officers’ ability to safely arrest suspects and

could place suspects at an advantage over the officers in confrontations. Having considered your arguments and reviewed the information in question, we conclude that you have not demonstrated that any of the information in Exhibits C, D, or J is excepted from disclosure under section 552.108(b)(1).

We next note that you have marked one of the submitted documents as coming within the scope of section 552.115 of the Government Code. Section 552.115 provides that a birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure. In this instance, however, the submitted birth certificate is held by the university. Section 552.115 applies only to a birth certificate that is maintained by the bureau of vital statistics or a local registration official. Therefore, the university may not withhold the submitted birth certificate under section 552.115. *See also* Open Records Decision No. 338 (1982).

You also raise section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure a peace officer's current and former home addresses and telephone numbers, the officer's social security number, and information that reveals whether the officer has family members, regardless of whether the peace officer has complied with sections 552.024 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We have marked the information that the university must withhold under section 552.117(a)(2).

The submitted information also includes photographs of a peace officer. Section 552.119 of the Government Code excepts from disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. Section 552.119 also adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. The three exceptions under section 552.119 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. 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). You do not inform us that any of the exceptions under section 552.119 are applicable to the submitted photographs of a peace officer or that the officer depicted in these photographs has executed any written consents to disclosure. We therefore conclude that the university must withhold the photographs that we have marked under section 552.119.

Lastly, we address your claim under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue a personal identification document.

Gov't Code § 552.130(a). We have marked the submitted information that the university must withhold under section 552.130.

In summary, criminal history information that was obtained from the NCIC or TCIC networks or that is private under *Reporters Committee* must be withheld from disclosure under section 552.101 of the Government Code. The university also must withhold the information that is excepted from disclosure under section 552.101 in conjunction with section 1701.306 of the Occupations Code, section 559.003 of the Government Code, and common-law privacy. The social security numbers of members of the public may be confidential under section 552.101 in conjunction with 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The university may withhold Exhibit K under section 552.108(a)(1), but must release basic information under section 552.108(c). The university must withhold the information relating to a peace officer that is excepted from disclosure under section 552.117(a)(2), the photographs of a peace officer that are excepted from disclosure under section 552.119, and the information that is excepted from disclosure under section 552.130. The rest of the submitted information is not excepted from disclosure and must be released.

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

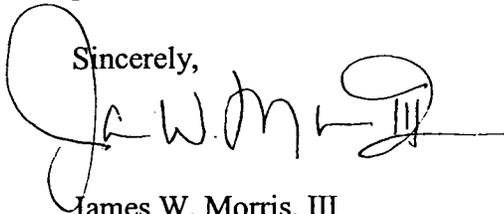
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The 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 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,



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

JWM/sdk

Ref: ID# 188809

Enc: Submitted documents

c: Mr. Louis A. McWherter  
723 Main, Suite 510  
Houston, Texas 77002  
(w/o enclosures)