



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2003

Ms. J. Middlebrooks
Assistant City Attorney
Dallas Police Department
1400 South Lamar
Dallas, Texas 75201

OR2003-8644

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191919.

The Dallas Police Department (the "department") received a request for "incident reports or resulting narratives or findings" pertaining to the "5600 block of North Central Expressway" for a specified period of time. You indicate that the department will release some responsive information to the requestor. You claim, however, that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.108, 552.117, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted representative sample documents.²

Initially, we note that portions of the submitted information, which we have marked, are not responsive to the request for information. Accordingly, we need not address the public

¹ As the department did not submit to us written comments stating the reasons why section 552.108 of the Government Code would allow any portion of this information to be withheld, we find that the department has waived this exception to disclosure. See Gov't Code §§ 552.301, .302. Further, as we did not receive comments stating the reasons why section 552.117 of the Government Code would allow any portion of this information to be withheld, we assume that this exception to disclosure is no longer being asserted by the department.

² We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

availability of that particular information and find that the department need not release it to the requestor in response to this ruling.³

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code.⁴ Chapter 772 authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable only to an emergency 911 district established in accordance with chapter 772. *See Open Records Decision No. 649 at 1-3 (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.* These particular sections make confidential the originating telephone number and address of a 911 caller that are furnished by a service supplier. *See id.* at 2. We note, however, that these sections are only applicable to originating telephone numbers and addresses obtained by a 911 district's use of a service supplier's database. *See Open Records Decision No. 649 at 2 (1996)*. We assume that any emergency 911 district associated with these portions of the submitted information was established in accordance with chapter 772. To the extent that the originating telephone numbers, that we have marked, were supplied by a 911 service supplier to an emergency 911 district that is subject to subchapter C of chapter 772 of the Health and Safety Code, they are confidential under chapter 772 and, thus, must be withheld pursuant to section 552.101 of the Government Code.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 states in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

³ Because we find that this particular information is not responsive to the request for information, we need not address your claim that a social security number contained within a portion of this information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with federal law.

⁴ Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Portions of the submitted information, which we have marked, concern law enforcement records and files pertaining to juvenile conduct that occurred after September 1, 1997.⁵ It appears that none of the exceptions in section 58.007 apply to this marked information. Accordingly, we conclude that the department must withhold this marked information pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We note that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. 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). Portions of the submitted information, which we have marked, concern reports of alleged or suspected abuse made under chapter 261 and working papers used or developed in an investigation under chapter 261 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. We, therefore, assume that no such regulation exists. Given that assumption,

⁵ A "child" is defined in the Family Code as a person who is ten years of age or older and under seventeen years of age. See Fam. Code § 51.02(2)(a).

we conclude that the department must withhold this marked information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (applying predecessor statute).

Further, we note that criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) 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 id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Further, when a governmental entity compiles information that relates to a specific individual as a suspect, arrestee, or defendant in a case, 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.⁶ *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). Accordingly, to the extent that the requested records contain such information, the department must withhold that information pursuant to section 552.101 of the Government Code.

In addition, you claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Information is protected from disclosure under the common-law right to privacy if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

⁶ Section 552.101 of the Government Code also encompasses information that is protected from disclosure by the common-law right to privacy.

In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information). In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Based on your arguments and our review of the submitted information, we conclude that the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

Finally, you claim that a portion of the submitted information 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 driver's license number that we have marked pursuant to section 552.130 of the Government Code, but only if it is a Texas driver's license number.

In summary, the department must withhold the marked originating telephone numbers pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code, to the extent that they were supplied by a 911 service supplier to an emergency 911 district that is subject to subchapter C of chapter 772. The department must also withhold the information that we have marked pursuant to section 552.101 in conjunction with sections 58.007 and 261.201 of the Family Code and the common-law right to privacy. In addition, to the extent that the requested records contain CHRI, the department must withhold that information pursuant to section 552.101. Further, the department must withhold the driver's license number that we have marked pursuant to section 552.130 of the Government Code, but only if it is a Texas driver's license number. The department must release the remaining submitted 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).

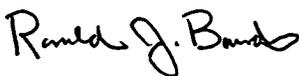
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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# 191919

Enc. Marked documents

c: Mr. Mark Smith
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