



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2004

Ms. Pamela Hutson
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2004-8986

Dear Ms. Hutson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211300.

The City of Arlington (the "city") received a request for information relating to a named city police officer, including documents from his personnel file, a copy of any separate internal affairs file, and records of his initial interview, oral review board, employment application, and background investigation. You state that the city will release some of the requested information. You seek to withhold other responsive information under sections 552.101, 552.117, 552.119, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the

¹Although you initially also raised sections 552.103, 552.107, and 552.108, you submitted no arguments in support of these discretionary exceptions to disclosure. Consequently, you have waived sections 552.103, 552.107, and 552.108. *See* Gov't Code §§ 552.007, .301(e)(1)(A), .302; Open Records Decision Nos. 665 at 2 n.5 (2000), 663 at 5 (1999). Although you likewise submitted no arguments under sections 552.117, 552.119, or 552.130, these are mandatory exceptions that may not be waived. Accordingly, we have considered the applicability of sections 552.117, 552.119, and 552.130. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

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 Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a governmental entity compiles information that relates to a particular individual as a possible suspect, arrestee, or criminal defendant, 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 U.S. 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). To the extent that the submitted documents contain such a compilation of criminal history information, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code.

Common-law privacy also protects certain kinds of personal financial information. Although personal financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to be those that involve receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).* We have marked personal financial information that the city must withhold under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information that other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information Center (the "NCIC") or the Texas Crime Information Center (the "TCIC") is 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; *see generally Gov't Code ch. 411 subch. F. 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).² 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 the public as provided by subchapter F of chapter 411 of the Government Code. Therefore, the city must withhold any CHRI obtained from the NCIC or TCIC networks under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 also incorporates section 1703.306 of the Occupations Code. Chapter 1703 of the Occupations Code codifies the Polygraph Examiners Act. Section 1703.306 provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

²We note that the statutory definition of CHRI does not encompass driving record information maintained by the DPS under subchapter C of chapter 521 of the Transportation Code. *See* Gov't Code § 411.082(2) (defining "criminal history record information").

Occ. Code § 1703.306. We have marked information relating to a polygraph examination that is confidential under section 1701.306. As there is no indication that the requestor has a right of access to the marked information, it must be withheld under section 552.101 of the Government Code.

Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175. 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 information that the city must withhold under section 552.117(a)(2).

Section 552.119 provides as follows:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (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.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. As the submitted documents do not contain a photograph of a peace officer, the city may not withhold any of the submitted information under section 552.119.

Section 552.130 excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). We have marked Texas driver's license information that must be withheld under section 552.130.

In summary: (1) any information compiled by the city that relates to a particular individual as a possible suspect, arrestee, or criminal defendant is private under *Reporters Committee*

and must be withheld under section 552.101; (2) the city must withhold the personal financial information under section 552.101 in conjunction with common-law privacy; (3) any CHRI obtained from the NCIC or TCIC networks must be withheld under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (4) the polygraph information must be withheld under section 552.101 in conjunction with section 1703.306 of the Occupations Code; (5) the city must withhold the information that is excepted from disclosure under section 552.117(a)(2); and (6) the Texas driver's license information must be withheld under section 552.130. The rest of the submitted information 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).

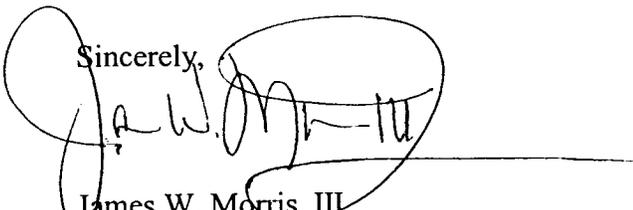
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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# 211300

Enc: Submitted documents

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(w/o enclosures)