



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 3, 2005

Ms. Judith Sachitano Rawls  
Assistant City Attorney/Police Administrative Legal Counsel  
Beaumont Police Department  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2005-00052

Dear Ms. Rawls:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 216170.

The Beaumont Police Department (the "department") received a request for information pertaining to four specified cases. You state that you have released some of the requested information, but claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that some of the submitted information "may have been obtained via a grand jury subpoena." The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a district attorney who is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983). *But see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). Thus, to the extent that the information at issue was obtained pursuant to a grand jury subpoena, it consists of records of the judiciary not subject to disclosure under the Act; however, to the extent that the submitted information was not obtained pursuant to a grand jury subpoena, the information is subject to disclosure under chapter 552 and must be released unless an exception to disclosure is demonstrated to be applicable. To the extent

the submitted information does not consist of records of the judiciary, we will address your exceptions to disclosure.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center is confidential and excepted from release under section 552.101. 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. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *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. After review of your arguments and the remaining information, we conclude you have not established that any of the information at issue constitutes CHRI obtained from DPS or any other criminal justice agency; therefore, you may not withhold any of the submitted information under section 552.101 on that ground.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual’s mortgage payments, assets, bills, and credit history is generally protected by the common law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* Open Records Decision No. 600 (finding personal financial information to include choice of particular insurance carrier). The submitted documents contains the personal financial information of an individual, and we do not believe that the public has a legitimate interest in it. *See* Open Records Decision Nos. 620 (1993), 600 (1992). Thus, we conclude that this information, which we have marked, is confidential under common law privacy, and the department must withhold it pursuant to section 552.101.<sup>1</sup>

Finally, you assert that some of the remaining information is excepted under section 552.130 of the Government Code. Section 552.130 provides in relevant part the following:

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<sup>1</sup>Because we are able to resolve this under section 552.101 in conjunction with common law privacy, we do not address your other arguments for exception regarding this information.

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a). We note that boat registration information is not excepted under section 552.130. Further, the submitted information does not contain Texas motor vehicle record information for purposes of section 552.130. *See* Transp. Code § 501.002(a)(14) (motor vehicle means a trailer or semitrailer, other than manufactured housing, that has a gross vehicle weight that exceeds 4,000 pounds). Accordingly, you may not withhold any of the remaining information under section 552.130.

To conclude, to the extent the submitted information was obtained pursuant to a grand jury subpoena, it is not subject to the Act. To the extent the submitted information is subject to the Act, the department must withhold under section 552.101 the marked information that is confidential under common law privacy, but it must release the remaining information at issue.

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

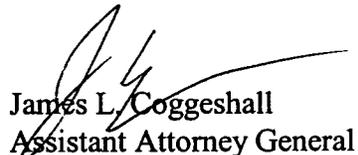
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The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

JLC/seg

Ref: ID# 216170

Enc. Submitted documents

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(w/o enclosures)