



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2005

Ms. Susan Camp Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2005-02967

Dear Ms. Lee:

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# 221540.

The City of Round Rock (the "city"), which you represent, received a request for any incident reports regarding a specific business and address. You state that you will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that Exhibits B, C, and D may be withheld under section 552.108(a)(1) of the Governmental Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).* You state that Exhibits B, C, and D relate to pending criminal investigations. Based upon this representation, we conclude that the release Exhibits B, C, and D would interfere with the detection, investigation, or prosecution of crime. *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).

You also claim that Exhibit E may be withheld under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the information

at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert that the report in Exhibit E pertains to a case that is closed and concluded in a result other than a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibit E.

We note, however, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c); *see Houston Chronicle*, 531 S.W.2d at 185; Open Records Decision No. 127 (1976). You state that you will release the basic information. Thus, Exhibits B, C, and D may be withheld under section 552.108(a)(1) of the Government Code. Also Exhibit E may be withheld under section 552.108(a)(2) of the Government Code.¹

You also claim Exhibits F, G, and H contain information that is confidential under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure 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. After reviewing Exhibits G and H, we agree you must withhold the Texas-issued motor vehicle record information you have marked under section 552.130. After reviewing Exhibit F, we find that some of the information you have marked must be withheld under section 552.130. However, you have failed to demonstrate that the rest of the information falls within the scope of section 552.130. Thus, we have marked a representative sample of the Texas-issued motor vehicle record information in Exhibit F that must be withheld under section 552.130 of the Government Code.

You claim that Exhibit F contains some information that is excepted under section 552.101 of the Governmental Code. This section excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that is made confidential by statute. Gov't Code § 552.101. Criminal history record information ("CHRI") is confidential and not subject to disclosure. 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

¹Because of our ruling on Exhibits B, C, D, and E we need not address your additional arguments with respect to this information.

be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. 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. *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).² Furthermore, information compiled by a law enforcement agency that depicts a particular individual as a criminal suspect, arrestee, or defendant 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). After reviewing Exhibit F, we have marked the CHRI that must be withheld under section 552.101 of the Government Code. The remaining information in Exhibit F is not CHRI and may not be withheld on that basis.

We note that portions of Exhibit F are protected by common-law privacy, which is also encompassed by section 552.101. The common-law right of privacy protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. Thus, we have marked a representative sample of the information in Exhibit F that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city may withhold Exhibits B, C, and D under section 552.108(a)(1) of the Government Code. The city may withhold Exhibit E under section 552.108(a)(2) of the Government Code. The city must withhold the Texas-issued motor vehicle record information you have marked in Exhibits G and H under section 552.130 of the Government Code. In Exhibit F, we have marked a representative sample of the Texas-issued motor vehicle record information the city must withhold under section 552.130 of the Government Code. The city must withhold the CHRI we have marked in Exhibit F under section 552.101 of the Government Code. In Exhibit F, we have marked a representative sample of personal financial information the city must withhold under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released 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

²However, the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See Gov’t Code § 411.082(2)(B)*.

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).

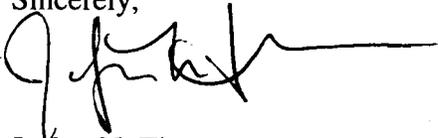
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Jaelyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 221540

Enc. Submitted documents

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(w/o enclosures)