



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 14, 2005

Mr. Brad Norton
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-8845

OR2005-06250

Dear Mr. Norton:

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# 228039.

The City of Austin (the "city") received a request for specified "activity call sheets" for April 23 and 24, 2005. You state that the city has released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information

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. This section encompasses information other statutes make confidential. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You indicate that the emergency communication district involved here is subject to section 772.318. Therefore, we agree that the 9-1-1 callers' originating phone numbers and addresses that you have marked, as well as an additional phone number that we have marked, are excepted from public disclosure based on section 552.101 as information deemed confidential by statute.¹

¹We note, however, that the section 772.318 does not make a 9-1-1 caller's name confidential.

You also raise section 730.004 of the Transportation Code, which provides:

Notwithstanding any other provisions of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005 - 730.008, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Transp. Code § 730.004. Section 730.003 provides that, for purposes of chapter 730 of the Transportation Code:

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

...

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601.

Transp. Code § 730.003(1), (4). Section 730.004 only applies to an "agency" that compiles or maintains motor vehicle records. *See* Transp. Code § 730.003(1). We do not believe that the city compiles or maintains motor vehicle records. Therefore, section 730.004 does not apply to the city. Accordingly, none of the requested information may be withheld under section 552.101 in conjunction with section 730.004 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

We note, however, that portions of the information at issue are excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy.² 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 Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685

²Section 552.101 of the Government Code also encompasses the doctrine of common law privacy.

(Tex. 1976). The common-law right to privacy protects certain types of personal financial information. This office has determined that financial information that relates 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) (identifying public and private portions of state employees' personnel records), 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the 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 the information that must be withheld under section 552.101 in conjunction with the common-law right to privacy.

You claim that section 552.108 of the Government Code is applicable to some information contained in the submitted documents. This section provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) 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[.]

Gov't Code § 552.108. A governmental body claiming section 552.108(a)(1) 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that some of the submitted information pertains to ongoing criminal investigations or prosecutions, and you have explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have met your burden under section 552.108(a)(1) for the information that we have marked. You also state that some of the requested information pertains to criminal investigations that have concluded in a final result other than conviction or deferred adjudication. Thus, you have met your burden under section 552.108(a)(2) for the information we have marked. Therefore, the department may withhold the information we have marked under section 552.108.

However, 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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the marked information from disclosure based on section 552.108. We note that you have the discretion to release all or part of the remaining information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

Regarding the remaining submitted information to which you claim section 552.108 applies, we find that the city has not sufficiently explained the applicability of section 552.108 and the city may not withhold this information on that basis. We note, however, that a portion of this information includes criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). 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. 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. *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). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the information that is CHRI generated by TCIC and NCIC, and the city must withhold this information under section 552.101 of the Government Code.

The city argues that portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code, which provides in relevant part:

(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[.]

The city must withhold the information you have marked under section 552.130, except as we have noted otherwise. We have also marked some additional information that must be withheld under section 552.130.

Finally, we note that the submitted information contains a social security number. Section 552.147 of the Government Code³ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the city must withhold the social security number contained in the submitted information, which we have marked, under section 552.147.⁴

In summary, the city must withhold the 9-1-1 callers’ originating phone numbers and addresses that you have marked, plus the additional originating phone number we have marked, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. With the exception of basic information, which must be released, the city may withhold the information we have marked under section 552.108 of the Government Code. The city must withhold the CHRI generated by TCIC and NCIC that we have marked under section 552.101 of the Government Code. The city must withhold the information you have marked under section 552.130 of the Government Code, except as we have noted otherwise. The city must also withhold the additional section 552.130 information that we have marked under that exception and the marked social security number under section 552.147 of the Government Code. The remaining submitted 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 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

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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).

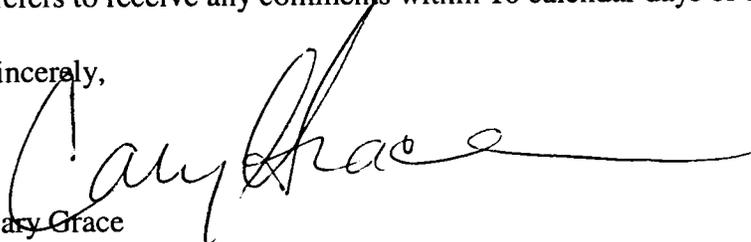
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Mr. Brad Norton - Page 7

Ref: ID# 228039

Enc. Submitted documents

c: Mr. John Bonine
P.O. Box 293961
Kerrville, Texas 78029
(w/o enclosures)