



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2005

Ms. Leann D. Guzman
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2005-06749

Dear Ms. Guzman:

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# 228968.

The City of Fort Worth (the "city") received a request for offense reports relating to the requestor's client. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that report number 90132737 is not responsive to the request, as it does not pertain to the individual specified by the requestor. We have marked this document, which this ruling does not reach and the city need not release in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Next, we note that you have not submitted information responsive to the request for information related to incidents that occurred on September 9, 1984; August 3, 1986; or June 3, 1987. We assume the city has released this information to the requestor. If it has not, it must do so at this time to the extent that such information existed on the date the city received the request. See Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information that is made confidential by statute. Criminal history record information ("CHRI") obtained from the National Crime Information Center (the

“NCIC”) or the Texas Crime Information Center is confidential under federal and state law.¹ Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI 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* Open Records Decision No. 565 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 §§ 411.084, .085, .087, .089. Thus, CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. CHRI obtained from DPS or another criminal justice agency must be withheld from the public as provided by subchapter F of chapter 411 of the Government Code. Upon review, none of the submitted information is CHRI that is confidential under subchapter F of chapter 411 of the Government Code. Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the common law right of privacy, which protects information 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offenses may be withheld under common law privacy. Portions of the requested information pertain to allegations of attempted sexual assault. Therefore, the city must withhold the information we have marked that would identify or tend to identify the victim pursuant to section 552.101 in conjunction with common law privacy.

Section 552.130 of the Government Code provides in relevant part:

¹ Section 411.082 of the Government Code defines criminal history record information as meaning “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). The definition does not encompass driving record information maintained by the Texas Department of Public Safety (“DPS”) under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2)(B).

(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;
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a). However, section 552.130 excepts information from disclosure in order to protect individuals' privacy. Therefore, the requestor is entitled to information pertaining to motor vehicles in which her client owns an interest, and such information may not be withheld under section 552.130. *See* Gov't Code § 552.023(b) (governmental body may not deny access to information to person to whom information relates on grounds that information is considered confidential by privacy principles). Texas-issued motor vehicle record information that pertains to other individuals and vehicles in which the requestor's client owns no interest must be withheld under section 552.130.

In summary, we have marked information that identifies the victims of sexual assault that must be withheld under section 552.101 of the Government Code in conjunction with the common law right of privacy. To the extent the submitted Texas-issued motor vehicle record information pertains to individuals other than the requestor's client, it must be withheld under section 552.130 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 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 228968

Enc. Submitted documents

c: Ms. Katherine Minnich
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(w/o enclosures)