



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2005

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P. O. Box 3066
Conroe, Texas 77305

OR2005-08705

Dear Mr. Scott:

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# 232945.

The Conroe Police Department (the "department") received a request for fourteen specific police reports. You state that you have released three of the requested reports in their entirety. You state that you have released the basic information about the crimes from all but one of the remaining reports. See Gov't Code § 552.108(c) (stating that basic information about arrested person, arrest, or crime may not be withheld under Gov't Code § 552.108); see also *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); Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You claim that the remaining 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 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685

(Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Exhibit B pertains to a sexual assault. Generally, only information tending to identify victims of serious sexual offenses is protected by common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In those instances, however, where it is demonstrated that the requestor knows the identity of the victim and the nature of the offense, the entire report must be withheld to protect the victim's privacy. You argue that the report at issue should be withheld in its entirety on the basis of common-law privacy to protect the victim's identity. However, you have not given us any information that would lead us to believe that the requestor knows the victim's identity and the nature of the offense. Thus, you have not demonstrated that the entire report must be withheld on the basis of common-law privacy. Accordingly, only the victim's identifying information, which we have marked in Exhibit B, must be withheld under section 552.101 and common-law privacy.

We note that Exhibit B contains some criminal history record information ("CHRI"), which is also encompassed by section 552.101. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. 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. 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). 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. 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. Accordingly, the department must withhold the CHRI in Exhibit B that we have marked under section 552.101 of the Government Code.

Next, we note that Exhibit B contains fingerprint information which is also encompassed by section 552.101 of the Government Code. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold this information, which we have marked in Exhibit B, under section 552.101 in conjunction with section 560.003 of the Government Code.

You claim that the motor vehicle information is excepted 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. Upon review, agree that the Texas driver's license number, which we have marked in Exhibit B, must be withheld under section 552.130 of the Government Code.

We note that Exhibit B contains a social security number. Section 552.147 of the Government Code¹ provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the social security number we have marked in Exhibit B under section 552.147 of the Government Code.²

You claim that Exhibits A and C consist of reports that are excepted under section 552.108 of the Government Code. section 552.108 of the Government Code, which provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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[.]

¹Added 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).

²We 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.

Gov't Code § 552.108(a). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation or prosecution of crime. *See* Gov't Code §§ 552.108(a)(1), (a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Further, 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 state that Exhibit A consists of records that relate to pending criminal investigations and prosecutions. Based upon this representation, we conclude that the release of Exhibit A would interfere with the detection, investigation, or prosecution of crimes. We therefore agree that section 552.108(a)(1) is applicable to this information. *See Houston Chronicle*, 531 S.W.2d 177. You also advise that Exhibit C consists of records pertaining to cases that are closed and concluded in a result other than conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) is applicable to Exhibit C. Accordingly, the department may withhold Exhibit A under section 552.108(a)(1) and Exhibit C under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold the victim's identifying information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the fingerprint information we have marked in Exhibit B under section 552.101 in conjunction with section 560.003 of the Government Code. The department must withhold the Texas driver's license number we have marked in Exhibit B under section 552.130 of the Government Code. The department must withhold the social security number we have marked in Exhibit B under section 552.147 of the Government Code. Additionally, the department may withhold Exhibit A under section 552.108(a)(1) and Exhibit C under section 552.108(a)(2) of the Government Code. The remaining 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, 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); *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 Office of the Attorney General 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. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 232945

Enc. Submitted documents

c: Glenda Schill
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(w/o enclosures)