



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2005

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

OR2005-08715

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# 232949.

The City of Fort Worth (the "city") received a request for information pertaining to a particular investigative file . You claim that the requested 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, we note that a portion of the submitted information relates to a sex offender who was subject to registration under Chapter 62 of the Code of Criminal Procedure. Article 62.02(b) of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the Department of Public Safety ("DPS") sex offender registration database: the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a photograph of the person; a complete set of the person's fingerprints; the type of offense the person was convicted of; the age of the victim; the date of the conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; and any other information required by DPS. *See* Crim. Proc. Code art. 62.02(b). This information is public information with the exception of the person's social security number, driver's

license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See* Crim. Proc. Code art. 62.08(b). A penal institution may release information regarding a person required to register only if the information is public information under Chapter 62. *See* Crim. Proc. Code art. 62.09. Therefore, you must release the information in Exhibit C that is subject to public disclosure under article 62.08(b) of the Code of Criminal Procedure.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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. 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. *See* Gov’t Code § 411.082(2)(B) (term CHRI does not include driving record information). Thus, to the extent that the information in Exhibit D is CHRI, generated by TCIC and NCIC, it is excepted from required public disclosure by section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

This office has found that information that reflects an individual’s personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common law privacy. Open Records Decision Nos. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization,

and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common law privacy). This office has also ruled, however, that the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). We have marked personal financial information in the submitted documents that is excepted from disclosure under section 552.101 in conjunction with common law privacy. We note, however, that the requestor has a special right of access under section 552.023 to her own personal financial information. *See* Gov't Code § 552.023.¹ Thus, the city must release the requestor's personal financial information to the requestor pursuant to section 552.023.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the city must withhold the Texas motor vehicle record information we have marked in Exhibits D and E. We note, however, that some of the marked information relates to a vehicle in which the requestor may own an interest. Because section 552.130 protects privacy interests, the requestor has a special right of access to information relating to a vehicle in which she owns an interest. *See* Gov't Code § 552.023.

Section 552.147 of the Government Code² 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 numbers we have marked in Exhibits C and E under section 552.147.³

In summary, the city must release the information in Exhibit C that is subject to public disclosure under article 62.08(b) of the Code of Criminal Procedure. To the extent that the

¹ Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

² Added 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).

³ We 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.

submitted information contains CHRI that is confidential under federal law or subchapter F of chapter 411 of the Government Code, the city must withhold any such information under section 552.101. The city must also withhold the information marked pursuant to section 552.101 in conjunction with common law privacy, and sections 552.130 and 552.147 of the Government Code. 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 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/seg

Ref: ID# 232949

Enc. Submitted documents

c: Ms. Corina Gomez
6600 Water Hill Lane
Fort Worth, Texas 76179
(w/o enclosures)