



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2005

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2005-09155

Dear Mr. Gambrell:

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# 233841.

The Houston Police Department (the "department") received two requests from the same requestor for information relating to a specified arrest; a 911 call; five named individuals; and four street addresses. You have submitted information that you claim is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common law right to privacy. 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,

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).*

685 (Tex. 1976). When a law enforcement agency is asked to compile criminal history information with respect to a specific individual, the compiled information 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 U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993).

In this instance, the first request is for information relating to a specified arrest and a particular 911 complaint call. Moreover, the requestor has provided details of those incidents that would appear to be sufficient to enable the department to locate any responsive information. Therefore, any information that relates to the specified arrest or the 911 complaint call is not protected by common law privacy under *Reporters Committee* and may not be withheld on that basis under section 552.101 of the Government Code. The second request, however, is for unspecified records involving four named individuals "and/or" three street addresses during a particular time interval. The second request implicates the named individuals' right to privacy. Therefore, to the extent that the department maintains any unspecified records that relate to any of the named individuals as a possible criminal suspect, arrested person, or defendant and do not involve any of the listed street addresses, any such records are protected by common law privacy under *Reporters Committee* and must be withheld under section 552.101. We note that information that relates to an individual only as a complainant, witness, or other involved person, and not as a possible suspect, arrested person, or defendant, is not protected by common law privacy under *Reporters Committee* and may not be withheld on that basis under section 552.101. Likewise, records of traffic offenses may not be withheld under section 552.101 in conjunction with privacy under *Reporters Committee*. *Cf.* Gov't Code § 411.082(2).

Section 552.101 also encompasses information that other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information Center (the "NCIC") or the Texas Crime Information Center (the "TCIC") is confidential under federal and state law. CHRI means "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). 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"). 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 (1990); *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 § 411.089(b). Thus, the department must withhold any CHRI obtained from the NCIC or TCIC networks under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See* Gov't Code § 411.082(2) (defining "criminal history record information").

Next, we address your claims under section 552.108 of the Government Code. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that some of the submitted police reports relate to criminal investigations that are inactive pending additional leads. You also inform us, however, that the statutes of limitations have not expired and that these investigations may be reactivated once additional leads are developed. You assert that the release of information relating to these investigations would interfere with the detection and investigation of crime. Based on your representations, we have marked the reports that fall within the scope of section 552.108(a)(1). *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).

Section 552.108 also excepts "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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)(2). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that some of the submitted police reports relate to concluded investigations that did not result in a conviction or a deferred adjudication. Based on your representations, we have marked the reports that fall within the scope of section 552.108(a)(2).

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976)

(summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the submitted information that falls within the scope of section 552.108(a)(1) or section 552.108(a)(2).

You also raise section 552.130 of the Government Code. This section excepts from public 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(a)(1)-(2). We have marked Texas driver's license and motor vehicle information that the department must withhold under section 552.130.

Lastly, we note that the remaining information includes a social security number. 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.³ Therefore, the department must withhold the social security number that we have marked under section 552.147.

In summary: (1) any unspecified records maintained by the department that relate to any of the four named individuals as a possible criminal suspect, arrested person, or defendant and do not involve any of the listed street addresses must be withheld under section 552.101 of the Government Code in conjunction with common law privacy under *Reporters Committee*; (2) any CHRI obtained from the NCIC or TCIC must be withheld under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (3) except for the basic information that must be released under section 552.108(c), the department may withhold the information that falls within the scope of section 552.108(a)(1) or section 552.108(a)(2); (4) the Texas driver's license and motor vehicle information must be withheld under section 552.130; and (5) the social security number must be withheld under section 552.147. The rest of the submitted 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

²Added 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).

³We 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.

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).

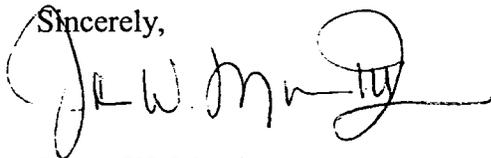
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large, stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 233841

Enc: Submitted documents

c: Mr. Greg Harman
Houston Press
1621 Milam
Houston, Texas 77002
(w/o enclosures)