



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2005

Ms. Janis Kennedy Hampton
Assistant City Attorney
City of Bryan
P. O. Box 1000
Bryan, Texas 77805

OR2005-09938

Dear Ms. Hampton:

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# 235619.

The City of Bryan Police Department (the "department") received a request for all email transmissions sent or received from all mobile computer-equipped police patrol units during a specified time. 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 62.051 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 recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by Article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any

other information required by DPS.¹ *See* Crim. Proc. Code art. 62.051(c). 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.² *See* Crim. Proc. Code art. 62.005(b). A penal institution may release information regarding a person required to register only if the information is public information under Chapter 62.³ *See* Crim. Proc. Code art. 62.009(a). Therefore, you must release the information that is subject to public disclosure under article 62.005(b).

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. Section 552.101 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

¹We note that the Seventy-ninth Legislature renumbered and amended former article 62.02 of the Code of Criminal Procedure as article 62.051. *See* Act of June 18, 2005, 79th Leg., R.S., H.B. 867, ch. 1008, § 1.01, 2005 Tex. Sess. Law Serv. 3833, 3394 (to be codified at article 62.051 of Code of Criminal Procedure).

²We note that the Seventy-ninth Legislature renumbered and amended former article 62.08 of the Code of Criminal Procedure as article 62.005. *See* Act of June 18, 2005, 79th Leg., R.S., H.B. 867, ch. 1008, § 1.01, 2005 Tex. Sess. Law Serv. 3833, 3390 (to be codified at article 62.005 of Code of Criminal Procedure).

³We note that the Seventy-ninth Legislature renumbered and amended former article 62.09 of the Code of Criminal Procedure as article 62.009. *See* Act of June 18, 2005, 79th Leg., R.S., H.B. 867, ch. 1008, § 1.01, 2005 Tex. Sess. Law Serv. 3833, 3393 (to be codified at article 62.009 of Code of Criminal Procedure).

federal law and subchapter F of chapter 411 of the Government Code. We note, however, 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").

Section 552.101 also 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, 685 (Tex. 1976). This office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we have marked the information that must be withheld under section 552.101 in conjunction with common law privacy.

We next address the department's claim that portions of the submitted information are excepted from release under section 552.130 of the Government Code. This section excepts from disclosure information that 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; or
- (3) a personal identification documentation issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We have marked Texas driver's license, motor vehicle, and personal identification information that the department must withhold under section 552.130.

In summary, the department must withhold: 1) 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; 2) the information we have marked pursuant to section 552.101 in conjunction with common-law privacy; and 3) the Texas

motor vehicle information we have marked. The department must release the information that is subject to public disclosure under article 62.005(b) of the Code of Criminal Procedure. The department must release the remaining submitted information.

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,

A handwritten signature in black ink that reads "Candice M. De La Garza". The signature is written in a cursive, flowing style.

Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 235619

Enc. Submitted documents

c: Mr. Jim James
Law Office of James & Reynolds
P. O. Box 1146
Bryan, Texas 77806
(w/o enclosures)