



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2005

Ms. Michele Austin
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2005-11516

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 238479.

The Houston Police Department (the "department") received a request for information pertaining to a specified case. You claim that the requested information is excepted from disclosure under sections 552.101, 552.1175, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that submitted information includes a custodial death report. In 2003, the Office of the Attorney General (the "OAG") revised the format of a custodial death report. Previously, the report consisted of five sections. In Open Records Decision No. 521 at 5 (1989), we concluded that under article 49.18(b) of the Code of Criminal Procedure in conjunction with a directive issued by the OAG, section one of a custodial death report filed with this office was public information and must be released, but sections two through five of the report, as well as attachments to the report, were confidential. *See* Crim. Proc. Code art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). A custodial death report now consists of two pages and an attached summary of how the death occurred. The OAG has determined that the two-page report and summary must be released to the public; however, any other documents submitted with the revised report are confidential

under article 49.18 of the Code of Criminal Procedure. In this instance, the submitted documents include the revised custodial death report form. This information must be released under article 49.18 of the Code of Criminal Procedure.

Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is made confidential by other statutes. Section 143.1214 of the Local Government Code provides in part:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department’s use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

(c) The department head or the department head’s designee may forward a document that relates to disciplinary action against a fire fighter or police officer to the director or the director’s designee for inclusion in the fire fighter’s or police officer’s personnel file maintained under Sections 143.089(a)-(f) only if:

- (1) disciplinary action was actually taken against the fire fighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov’t Code § 143.1214(b)-(c). You state that the remaining submitted information concerns an internal affairs investigation into allegations of misconduct by police officers that were not sustained, and that no disciplinary action was taken. You also state that this information does not meet the conditions specified by section 143.1214(c) for inclusion in the police officers’ civil service personnel files. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(f). Based on your representations, we generally agree that the remaining

submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. *See also* Open Records Decision No. 642 (1996)(concluding that files relating to investigations of Houston Fire Department personnel by Public Integrity Review Group of Houston Police Department were confidential under Local Gov't Code § 143.1214).

We note, however, that the remaining submitted information includes department offense reports which are also maintained separate and apart from the internal affairs investigation. We also note that the request does not specifically ask for information from the police officers' department personnel files. Instead, the request seeks information pertaining to a specified case. Because the requestor asks for information about the case in general, both the police officers' personnel files and any copy of the investigatory materials that the department maintains for law enforcement purposes are responsive. Any copy of the remaining submitted information that is maintained as part of the internal affairs investigation of alleged misconduct is confidential under section 143.1214 and must be withheld under section 552.101. However, any copy of the information that is maintained for other law enforcement purposes is not confidential under section 143.1214 and may not be withheld on that basis.

Next, criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. 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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). 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 chapter 411, subchapter F of the Government Code. Thus, to the extent that the remaining information as issue is CHRI generated by TCIC and NCIC, it must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrines 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. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type 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. 540 S.W.2d at 683. In addition this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information that is excepted under section 552.101 of the Government Code and common law privacy and must be withheld from disclosure.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175.¹ Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the information we have marked pertains to the home telephone number of a peace officer, this information must be withheld under section 552.117(a)(2).²

To the extent that the individuals whose information is at issue are not currently licensed peace officers, but are current or former department employees, section 552.117(a)(1) may apply. Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security numbers, and family member information of current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employees timely elected to keep their personal information confidential, the department must withhold the information we have marked under section 552.117(a)(1). The department may not withhold this

¹The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²As our ruling is dispositive for this information, we need not address your argument under section 552.1175.

information under section 552.117(a)(1) if the employees did not make timely elections to keep the information confidential.

You claim that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 requires the department to withhold “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.” Accordingly, the department must withhold most of the information you have marked under section 552.130. We note, however, that section 552.130 is designed to protect individuals’ privacy and that the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, information from motor vehicle records that were issued to a person who is now deceased, which we have marked, may not be withheld under section 552.130.

Finally, section 552.147 of the Government Code³ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Therefore, the department must withhold the social security numbers of living persons contained in the remaining information under section 552.147.⁴

In summary, the Custodial Death Report must be released under article 49.18 of the Code of Criminal Procedure. Any copy of the remaining submitted information maintained as part of the internal affairs investigation of alleged misconduct is confidential under section 143.1214 and must be withheld under section 552.101. However, any copies of the department offense reports that are maintained for other law enforcement purposes are not confidential under section 143.1214 and may not be withheld on that basis. To the extent that the remaining information at issue is CHRI generated by TCIC and NCIC, it must be withheld under section 552.101 of the Government Code. We have marked the information that must be withheld under section 552.101 of the Government Code in conjunction with common law privacy. To the extent the information we have marked pertains to the home telephone number of a peace officer, this information must be withheld under section 552.117(a)(2). If section 552.117(a)(2) does not apply, the department may withhold this information under section 552.117(a)(1) to the extent it pertains to a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. With the exception of the motor vehicle information

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov’t Code § 552.147).

⁴As our ruling is dispositive, we do not address your argument under section 552.101 for this information.

that pertains to a deceased individual, the department must withhold the information it has marked under section 552.130. The department must withhold the social security numbers of living persons contained in the remaining submitted information under section 552.147. The remaining information that is maintained by the department outside of the internal affairs investigation 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).

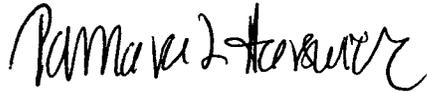
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read "Tamara L. Harswick". The signature is written in a cursive style with a large initial "T".

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/segH

Ref: ID# 238479

Enc. Submitted documents

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(w/o enclosures)