



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2006

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

OR2006-06742

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# 252393.

The Houston Police Department (the "department") received a request for any internal or external department communications related to two named individuals including investigative reports and communications with state and federal agencies. You claim that the requested information 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 reviewed the submitted information.

Initially, we note and the department acknowledges that it failed to meet its procedural obligations under section 552.301 of the Government Code for a portion of the requested information. Pursuant to section 552.301(e), within fifteen business days of receiving an open records request, a governmental body that wishes to withhold information from disclosure must submit to this office a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(4). You state that the department received the written request for information on April 4, 2006. Based on this date, the fifteenth business day following the department's receipt of the request was April 25, 2006. However, the department did not submit copies of some of the information it seeks to withhold until April 27, 2006. We therefore find that the department failed to comply with the procedural

requirements of section 552.301 with respect to Exhibits 4 and 5 of the submitted information. *See id.*

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See Open Records Decision No. 150 at 2* (1977). Here, the department's claims under section 552.101 can provide a compelling reason to withhold information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses section 58.007 of the Family Code. Section 58.007(c) applies to juvenile conduct that occurred after September 1, 1997 and provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by subchapter B.

Fam. Code § 58.007(c). Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. Section 58.007 applies to delinquent conduct as well as conduct indicating a need for supervision. *See Fam. Code § 51.04(a)* (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child); Open Records Decision No. 628 at 6 (1994) (predecessor statute). After reviewing the submitted information, we conclude that the information in Exhibits 4

and 5 involves juvenile conduct that occurred after September 1, 1997. Accordingly, the information in Exhibits 4 and 5 is confidential under section 58.007 of the Family Code, and must be withheld pursuant to section 552.101 of the Government Code as information made confidential by law.

Section 552.101 encompasses the Texas Homeland Security Act. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 to chapter 418 were added to the Government Code. These provisions make certain information related to terrorism confidential. You assert that the requested information is confidential under section 418.177, which provides as follows:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Gov't Code § 418.177. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The department claims the information at issue pertains to the means by which the department monitors possible terrorist activity. After reviewing the submitted arguments and the information at issue, we conclude the department has failed to establish that the submitted information is maintained for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. *See id.* § 418.177(1). Furthermore, we find the information neither constitutes nor reveals the contents of a vulnerability assessment. *See id.* § 418.177(2). Accordingly, we conclude that the department has failed to demonstrate that the requested information is confidential under section 418.177; therefore, the department may not withhold the information under section 552.101 of the Government Code.

Section 552.101 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. 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 information that we have marked in Exhibit 2 under section 552.101 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

This office has on numerous occasions concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that section 552.108 excepts detailed guidelines regarding a police department’s use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that section 552.108 excepts sketch showing security measures for execution).

You state and provided detailed arguments as to how the release of portions of the submitted information could interfere with law enforcement efforts. Having reviewed your arguments and the information at issue, we agree that the release of the information we have marked would interfere with law enforcement or crime prevention. Accordingly, the department may withhold the information we have marked in Exhibit 2 pursuant to section 552.108(b)(1).

We note that the submitted information contains Texas motor vehicle record information. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 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. Therefore, the department must withhold the Texas motor vehicle record information we have marked under section 552.130.

Finally, we note that section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.¹ Gov't Code § 552.147. Therefore, the social security number we have marked must be withheld pursuant to section 552.147.

In summary, the information that we have marked in Exhibit 2 that would interfere with law enforcement may be withheld under section 552.108(b)(1) of the Government Code. The CHRI information we have marked must be withheld under section 552.101 of the Government Code in conjunction with Chapter 411 of the Government Code. The information in Exhibits 4 and 5 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The Texas motor vehicle information we have marked must be withheld under section 552.130 of the Government Code. Finally, the social security number we have marked must be withheld under section 552.147 of the Government Code. The remaining 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

¹We 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,



Matthew T. McLain
Assistant Attorney General
Open Records Division

MM/eb

Ref: ID# 252393

Enc. Submitted documents

c: Mr. Keith Plocek
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(w/o enclosures)