



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2007

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

OR2007-02497

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# 272634.

The Bryan Police Department (the "department") received a request for all electronic communications sent or received from all mobile computer equipped police patrol units within a particular range of time. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from 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 made confidential by other statutes, such as section 58.007 of the Family Code. The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

¹ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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). The information in Message ID 010611230645001053 consists of law enforcement records of a juvenile who engaged in conduct indicating a need for supervision after September 1, 1997. See Fam. Code § 51.03(b) (defining “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to the information in the report; therefore, the message is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. You also indicate that Message ID 010611230721001132 relates to juvenile conduct. However, this information does not identify a juvenile as engaged in delinquent conduct or conduct indicating a need for supervision. Thus, this message may not be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 also 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 Texas 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 chapter 411, subchapter F. However, section 411.081(b) allows a police department to disclose to the public CHRI “that is related to the offense for which a person is involved in the criminal justice system.” *Id.*

§ 411.081(b). A portion of the submitted information is related to the offenses at issue, including updates and current warrants. Thus, because portions of the submitted information pertain to individuals' current involvement in the criminal justice system, the department may not withhold that information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. We have marked the CHRI that the department must withhold under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is generally intimate and embarrassing. See Open Records Decision No. 545 (1990). We have marked information that constitutes personal financial information. In this instance, we find that there is not a legitimate public interest in the release of this information. Accordingly, you must withhold the marked personal financial information under section 552.101 in conjunction with common-law privacy.

Next, the submitted records also contain information that may be excepted from disclosure under section 552.117(a)(2). Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.² We note that section 552.117(a)(2) of the Government Code is applicable to a peace officer's cell phone and pager numbers only if the cell phone or pager service is paid for by the officer with his or her own funds. See Open Records Decision No. 670 at 6 (2001). In this instance, you indicate that the cell phone service at issue is paid for by the officer at issue. Accordingly, you must withhold the marked cell phone number under section 552.117(a)(2). Because our determination on this issue is dispositive, we need not address your argument against disclosure under section 552.1175.

You also assert that some of the submitted remaining information is excepted under section 552.130 of the Government Code, which provides which provides in part:

(a) Information is excepted from the requirements 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 "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a). The department must withhold the Texas motor vehicle record information that we have marked under section 552.130 of the Government Code.

We note that some of the remaining information consists of social security numbers. 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. Therefore, the department must withhold the social security numbers we have marked under section 552.147.³

In summary, you must withhold Message ID 010611230645001053 under section 552.101 in conjunction with section 58.007 of the Family Code. You must withhold the information we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code and common-law privacy. The department must withhold the cell phone number marked under section 552.117(a)(2). The department must withhold the Texas motor vehicle record information and social security numbers we have marked under sections 552.130 and 552.147. The remaining 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 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

³ 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. Gov't Code § 552.147(b).

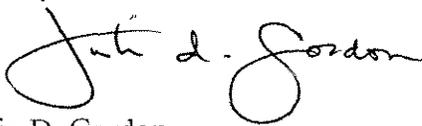
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 "Justin D. Gordon". The signature is written in a cursive style with a large, looping initial "J".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 272634

Enc. Submitted documents

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