



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2007

Mr. Denis C. McElroy
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-03706

Dear Mr. McElroy:

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# 274871.

The City of Fort Worth (the "city") received a request for incident reports and call sheets pertaining to a specified address from February 25, 2004 to February 26, 2006.¹ You state that you will release most of the information to the requestor, but claim that some of the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note that the requestor made his request for information on December 29, 2006; however, you explain that the city required the requestor to make a deposit for payment of the anticipated costs in accordance with section 552.263 of the Government Code, and that, on January 9, 2007, the requestor submitted the deposit. *See* Gov't Code 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that the governmental body receives deposit or bond). Thus, we agree that January 9, 2007, is the date the city received this specific request for information.

²We 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.

Initially, we note that the information submitted by the city includes Texas motor vehicle record information. In Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007), we issued previous determinations that authorize the city to withhold (1) a Texas driver's license number; (2) a Texas-issued state identification number; (3) a Texas license plate number; (4) a Texas license year of a motor vehicle; (5) class designations; (6) restrictions; (7) expiration dates; (8) license years for Texas-issued driver's licenses of living individuals; and (9) vehicle identification numbers relating to a title or registration issued by an agency of the State of Texas in which a living individual owns an interest under section 552.130 of the Government Code without the necessity of again requesting an attorney general decision with regard to the applicability of this exception. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). Thus, the city must withhold the Texas motor vehicle record information it has redacted in accordance with Open Records Letter Nos. 2006-14726 and 2007-00198. However, we will address your argument under section 552.130 for the information that is not subject to these previous determinations.

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. You claim that the submitted information contains criminal history record information ("CHRI"). Section 552.101 encompasses 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. Upon review, we find that the submitted information contains CHRI made confidential by section 411.083. Thus, the city must withhold the marked information under section 552.101 of the Government Code on that basis.

Section 552.101 encompasses Chapter 772 of the Health and Safety Code. Section 772.218 of the Health and Safety Code applies to an emergency 9-1-1 district for a county with a population over 860,000 and established in accordance with chapter 772. Section 772.218 makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). You state that the city is part of an emergency communication district that was established under section 772.218. You further state that the telephone numbers and addresses at issue were

provided by a service provider. Thus, based on your representations and our review, we determine that the phone numbers and address we have marked under section 772.218 of the Health and Safety Code are excepted from disclosure under section 552.101 of the Government Code.

Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* at 683. In addition, this office has found that the following types of information are excepted from public disclosure under common law privacy: 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), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). The city must withhold the information it has marked and that we have marked as being protected by common-law privacy.

Section 552.108 of the Government Code provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state, and provide documentation showing, that report 05-110061 relates to a pending criminal prosecution. Based on your representations and our review, we conclude that release of the report 05-110061 would interfere with the detection, investigation, or prosecution of crime. *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(b)(1) protects information the public disclosure of which would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). You state that the submitted information contains the identifying information of undercover police officers and that the release of their identifying information would interfere with law enforcement and jeopardize the officers' safety.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). We note that basic arrest information includes a detailed description of the offense, names of the investigating officers, the place of arrest, the location of the crime, and premises involved. *Houston Chronicle Publishing 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). *See also* Open Records Decision No. 127 at 4 (1976). Accordingly, with the exception of basic information, the city may withhold report 05-110061 pursuant to section 552.108(a)(1) of the Government Code.

The information in Exhibit C you claim to be excepted under section 552.108(b)(1) is basic information that may not be withheld on that basis. However, this information must be withheld under section 552.101 and common-law privacy. In Open Records Decision No. 169 (1977), this office recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 in conjunction with common-law privacy on a showing of "special circumstances." This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." Open Records Decision No. 169 at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* Having considered your arguments and the submitted information, we find that the city must withhold the basic information it has marked in Exhibit C that identifies undercover police officers pursuant to section 552.101 on the basis of common-law privacy and special circumstances.

Section 552.130 of the Government Code excepts from 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." *Id.*

§ 552.130. We agree that the city must withhold the additional Texas motor vehicle record information that it has marked pursuant to section 552.130.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* The city must withhold the information it has marked under section 552.136.

The city must withhold the information that it has marked in accordance with Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). The city must withhold the CHRI it has marked under section 411.083, the information we have marked under section 772.218 of the Health and Safety Code, and the information marked under common law privacy, each in conjunction with section 552.101. With the exception of basic information, the city may withhold report 05-110061 under section 552.108(a)(1). The city must withhold the additional Texas motor vehicle record information it has marked under section 552.130. The city must withhold the information it has marked pursuant to section 552.136. The remaining information must be released.

The city requests a previous determination that the following categories of information may be withheld withhold requesting a ruling from this office: license month/year of Texas issued license plates, registration sticker numbers, registration dates, numeric regulatory class designations, title numbers, title issuance dates, and plate age. We decline to issue a previous determination at this time. Accordingly, 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

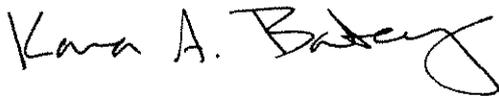
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/sdk

Ref: ID# 274871

Enc. Submitted documents

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(w/o enclosures)