



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2007

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

OR2007-05951

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# 278573.

The Bryan Police Department (the "department") received a request for "electronic communications (e-mails) sent or received from all mobile computer-equipped police patrol units" during a specified time period. You claim that some of 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 representative sample of information.¹

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;

¹We 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.

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.² *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.³ *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 62.⁴ *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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) 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, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

²We 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).

³We 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).

⁴We 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).

- (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). A portion of the submitted information pertains to a report of a juvenile runaway that occurred after September 1, 1997. This conduct is within the scope of section 58.007. *See id.* § 51.03(b)(3) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). It does not appear that any of the exceptions in section 58.007 apply; therefore, we agree that the information you have marked is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 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. Upon review, we determine that none of the remaining submitted information is confidential under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, criminal history record information (“CHRI”) generated by the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. 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 Government Code chapter 411, subchapter F. *See* Gov't Code § 411.082(2)(B) (term CHRI does not include driving record information). We have marked the CHRI the department must withhold under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

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) 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 is protected under section 552.136 of the Government Code.⁵ Section 552.136 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.” *Id.* § 552.136. Accordingly, the department must withhold the insurance policy number we have marked pursuant to section 552.136 of the Government Code.

In summary, 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 withhold the information marked under section 552.101 of the Government Code in conjunction with 1) section 58.007 of the Family Code, 2) common-law privacy, and 3) federal law and

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

chapter 411 of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must withhold the insurance policy number we have marked pursuant to section 552.136 of the Government Code. The remaining information must be released to the requestor.⁶

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).

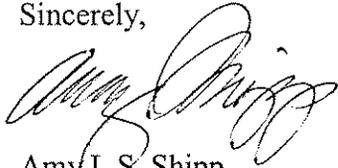
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

⁶We note that the submitted information contains social security numbers. 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.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 278573

Enc. Submitted documents

c: Mr. Jim James
Attorney at Law
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(w/o enclosures)