



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2007

Ms. Claire Yancey
Assistant District Attorney
County of Denton
P.O. Box 2850
Denton, Texas 76202

OR2007-11040

Dear Ms. Yancey:

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# 287503.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for any presentence investigation reports, and probation records, as well as specific police reports pertaining to a named individual. You claim that the probation records are records of the judiciary which are not subject to the Act. You claim that the remaining 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.

First, you assert that some of the submitted documents are probation records that are not subject to the Act. The Act generally requires the disclosure of information maintained by a "governmental body," but the judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). You state that the computer printouts pertaining to the named individual's probation status consist of "probation records . . . held by the County on behalf of the judiciary." However, you acknowledge that these computer printouts are maintained in the district attorney's litigation file. You have not explained how, nor can we envision a situation where, information maintained in a district attorney's litigation file is maintained on behalf of the judiciary. *See* Gov't Code § 552.301(e)(1)(A) (providing that it's governmental body's burden to establish applicability of claimed exception or otherwise explain why requested information should not be released). *But see*

Open Records Decision No. 646 at 5 (1996) (a community supervision and corrections department holds probationers' records, indicating whether probationers are complying with terms of probation, as an agent of the judiciary). Therefore, you have failed to demonstrate that these computer printouts are maintained by the district attorney on behalf of the judiciary and, consequently, we find that they are subject to the Act. *See generally* Open Records Decision No. 513 (1988) (stating that information collected or prepared by a district attorney that is submitted to the grand jury does not necessarily mean that such information is in grand jury's constructive possession when the same information is also held by a district attorney for his own purposes).

Section 552.101 exempts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses article 42.12 of the Code of Criminal Procedure. Article 42.12 is applicable to a presentence investigation report and provides in part:

(j) The judge by order may direct that any information and records that are not privileged and that are relevant to a report required by Subsection (a) or Subsection (k) of this section be released to an officer conducting a presentence investigation under Subsection (i) of this section or a postsentence report under Subsection (k) of this section. The judge may also issue a subpoena to obtain that information. A report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section and as directed by the judge for the effective supervision of the defendant. Medical and psychiatric records obtained by court order shall be kept separate from the defendant's community supervision file and may be released only by order of the judge.

Crim. Proc. Code art. 42.12 § 9(j). Although you generally state that the submitted information contains presentence investigation reports, you do not identify which portions of the submitted information you claim constitutes such reports. Gov't Code § 552.301(e)(2) (stating that governmental body must properly label submitted information to indicate which exceptions apply). Furthermore, after reviewing the submitted information, we do not find how any of the submitted information constitutes a presentence report. Therefore, the district attorney may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure.

Next, we turn to your argument under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) exempts from disclosure "[a]n 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 . . . if: (1) release of the internal record or notation would

interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1). This section is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department’s use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment). To claim this aspect of section 552.108 protection, however, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

In this instance, you claim that release of the submitted police reports would reveal law enforcement methods, techniques, and strategies that would interfere with law enforcement. However, you do not identify any enforcement methods, techniques or strategies of law enforcement in the submitted reports that differ from those commonly known. Therefore, you have not met your burden to adequately explain how the release of the reports would interfere with law enforcement, and you have failed to demonstrate that section 552.108(b)(1) is applicable to the submitted police reports. Accordingly, none of them may be withheld on that basis.

We note that criminal history record information (“CHRI”) obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28

C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See Open Records Decision No. 565 at 10-12 (1990); see generally* Gov’t Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code 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. *See* Gov’t Code § 411.089(b). The district attorney must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with the federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 also encompasses chapter 560 of the Government Code which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprints. Therefore, the district attorney must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You claim that some of the submitted information is excepted from public disclosure under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure 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)(1), (2). Upon review, we agree that you must withhold the Texas-issued motor vehicle record information we have marked, under section 552.130 of the Government Code.

Lastly, you claim that the submitted information contains social security number which are excepted from public disclosure under section 552.147 of Government Code. Section 552.147 provides that “[t]he social security number of a living person is excepted

from” required public disclosure under the Act. *Id.* § 552.147. Therefore, the district attorney may withhold the social security numbers contained in the submitted information under section 552.147 of the Government Code.¹

In summary, the CHRI that we have marked must be withheld under federal law and subchapter F of chapter 411 of the Government Code. The fingerprints we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The Texas motor vehicle information we have marked must be withheld under section 552.130 of the Government Code. The social security numbers contained in the submitted information may be withheld under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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).

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.

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,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Ref: ID# 287503

Enc. Submitted documents

c: Mrs. Helen Paul
594 East Rose Street
Lebanon, Oregon 97355
(w/o enclosures)