



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2007

Mr. David M. Swope
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2007-12316

Dear Mr. Swope:

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# 289726.

The Harris County Constable, Precinct 6 (the "constable") received a request for the following: 1) databases that would be comparable to the constable's computer-assisted dispatch log before the constable switched to a new system in January 2007; 2) a database of the constable's deputy investigative reports from January 27; 3) the cost to obtain periodic updates of databases; 4) a list of all databases maintained by the constable that can be copied and obtained under the Federal Freedom of Information Act ("FOIA") or the Act; 5) a description of what the databases contain; 6) a list of all databases maintained by the constable that may not be copied and released under FOIA or the Act and the reason that they may not be released; 7) a list of all databases maintained by the constable that could be copied and obtained in part under FOIA or the Act if the constable were to design a program to exclude confidential information and the charge to design such a program and periodically run the program; and 8) a printout from the constable's existing databases to show what information can be found in them¹. You assert that a portion of the submitted information is not subject to disclosure under the Act. You claim that other portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117,

¹It appears that the requestor has excluded social security numbers from the scope of his request. We further 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.

and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.²

We first address your argument that a portion of the submitted information does not constitute public information for purposes of chapter 552 of the Government Code. In Open Records Decision No. 581 (1990), this office determined that certain computer information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, such as source codes, documentation information, and other computer programming, is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in this decision and our review of the information at issue, we determine that a portion of the information in Exhibit B, which we have marked, does not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released. For the remaining information in Exhibit B, as well as Exhibits C, D, and E, we find that this information is maintained in connection with the transaction of the constable's official business, and therefore is public information as defined by section 552.002, and is subject to disclosure under the Act unless an exception to disclosure applies. Accordingly, we will consider the exceptions to disclosure raised by the constable for the remaining information.

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. This section encompasses the common-law right of privacy, which protects information if it (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 types 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 required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Accordingly, the constable must

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.

withhold the information that we have marked in Exhibit D under section 552.101 in conjunction with common-law privacy.

You raise section 552.101 of the Government Code in conjunction with the informer's privilege. The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). Although you raise the informer's privilege, you have not identified an informer or alleged violation, nor have you explained whether an alleged violation carries civil or criminal penalties. Accordingly, the constable has failed to demonstrate that the informer's privilege is applicable to the remaining information. Thus, we conclude that you may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the informer's privilege.

You state that the remaining information contains juvenile information subject to section 552.101 in conjunction with section 58.007 of the Family Code. Law enforcement records involving juvenile offenders and relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. 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:

- (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. *Id.* § 51.02(2)(A). Section 58.007 is applicable to information that relates to a juvenile as a suspect or offender, and not as a complainant, victim, witness, or other involved party. *See id.* § 58.007(c); *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Upon review, we find that you have failed to demonstrate that any of the remaining information pertains to a juvenile suspect or offender. Thus, the remaining information is not confidential under section 58.007 and it may not be withheld under section 552.101 of the Government Code on that basis.

You also raise section 552.108(a)(1) of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov’t Code* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that “the excluded information could also include information that falls under [section] 552.108.” However, you make no arguments that any of the specific information at issue is the subject to an actual ongoing criminal investigation or prosecution. Further, you do not provide any arguments explaining how release of the remaining information would interfere with the detection, investigation, or prosecution of crime. Therefore, you have failed to demonstrate the applicability of section 552.108 to the remaining information and it may not be withheld on that basis.

You claim that portions of the submitted information are excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See Open Records Decision No. 530 at 5* (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Upon review, we find that you have not identified any information that falls under section 552.117(a)(1), and thus none of the submitted information may be withheld on that basis.³

³We note, however, that the previous determination issued in Open Records Decision No. 670 (2001) authorizes the constable to withhold the home addresses and telephone numbers, personal cellular phone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

Section 552.130 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.” Gov’t Code § 552.130. Therefore, the constable must withhold the Texas driver’s license numbers we have marked pursuant to section 552.130 of the Government Code.

In summary, the constable need not release the information that we have marked in Exhibit B that does not constitute public information. The constable must withhold the information we have marked in Exhibit D under section 552.101 in conjunction with common-law privacy. The constable must withhold the information we have marked under section 552.130 of the Government Code. The remaining responsive 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 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 cursive script that reads "Jordan Johnson".

Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 289726

Enc. Submitted documents

c: Mr. Bill Murphy
Houston Chronicle
801 Texas Avenue
Houston, Texas 77002
(w/o enclosures)