



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2008

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

OR2008-02906

Dear Mr. McElroy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 303785.

The Fort Worth Police Department (the "department") received a request for Officers D. Parr's and D. Evans' mobile data terminal and radio traffic transmissions during their shifts on November 19, 2007. The department asserts the information is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions the department claims and have reviewed the submitted information. We have also received and considered the requestor's comments. *See Gov't Code § 552.304* (interested party may submit written comments regarding availability of requested information).

First, the requestor asserts the department failed to timely comply with section 552.301(e-1) of the Government Code, which requires the department to send a copy of its comments submitted to this office pursuant to section 552.301(e)(1)(A) to the requestor.¹ We note that section 552.301(e-1) does not prescribe a deadline with which the department must comply. Because the requestor acknowledges he received a copy of the department's comments, we find the department complied with section 552.301(e-1).

¹Although the requestor cites to section 552.301(e)(2), the provision he quotes is actually section 552.301(e-1).

Next, the department asserts section 552.108 excepts the information from public disclosure. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). 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), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department and an assistant district attorney state the requested information relates to a pending criminal prosecution and therefore may be withheld under section 552.108(a)(1). *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).

However, the requestor argues the department may not withhold the information under section 552.108 because all of the information is available to him as defense counsel pursuant to article 2.01 of the Code of Criminal Procedure and *Brady v. Maryland*, 373 U.S. 83 (1963). In *Brady*, the Supreme Court held the prosecution is required to provide the defense with all potentially exculpatory evidence. 373 U.S. at 87. Similarly, article 2.01 provides a district attorney shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused. Crim. Proc. Code art. 2.01. This provision and *Brady* address prosecutorial requirements and do not affect the requirements outlined in the Public Information Act. Furthermore, this office has ruled that when a governmental body discloses information because it reasonably concludes it has a constitutional obligation to do so, it may still invoke section 552.108. *See* Open Records Decision No. 454 (1986). Accordingly, based upon the department's representations, we conclude the department may withhold only the information we marked that appears on its face to relate to prosecution of the DWI charge under section 552.108(a)(1). However, the department failed to demonstrate the applicability of section 552.108(a)(1) to the remaining information because it failed to demonstrate that the remainder relates to the prosecution of the DWI charge.

We now consider the department's alternative arguments for the remaining information. Section 552.101 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 information protected by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *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."), (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."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances.

Id. § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, except for the information we marked, we agree the department must withhold the CHRI it marked pursuant to section 411.083.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is private information because it is highly intimate information that is not of legitimate public interest. Open Records Decision Nos. 600 (1992), 545 (1990). The department must withhold the financial information it marked under common-law privacy.

Finally, section 552.130 of the Government Code excepts from public disclosure information relating to a Texas driver's license or motor vehicle title or registration. After reviewing the information, we conclude the department must withhold the information it and we have marked under section 552.130.

In summary, the department may withhold the information we marked under section 552.108(a)(1). The department must withhold 1) the CHRI under section 411.083 of the Government Code; 2) the financial information under common-law privacy; and 3) the Texas motor vehicle information under section 552.130. The department must release the rest.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 303785

Enc. Marked documents

c: Mr. John G. Johnson
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(w/o enclosures)