



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2008

Ms. Patricia E. Carls
Carls, McDonald & Dalrymple, L.L.P.
Barton Oaks Plaza 2
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Austin, Texas 78746

OR2008-04686

Dear Ms. Carls:

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# 306918.

The City of Georgetown (the "city"), which you represent, received a request for fourteen categories of information pertaining to: (1) a named police officer, (2) two named individuals, and (3) the city police department's policies and procedures that are in effect from January 2007 to the time of the request. You state that the city has released some of the requested information to the requestor. You also state that the city does not have information responsive to several categories of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, 552.136,

¹We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

and 552.147 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note that two portions of the requested information appear to have been the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2006-10010 (2006), and 2008-04023 (2008). The city's police department's use of force policy was the subject of Open Records Letter No. 2006-10010, in which we ruled that portions of this policy were excepted from disclosure under section 552.108(b)(1). We note, however, that the policy at issue states that it was last revised on November 28, 2006, which was after the August 29, 2006 date of our ruling in Open Records Letter No. 2006-10010. We are unable to determine the extent to which those portions which we found to be excepted from disclosure have been changed. Therefore, to the extent the portions of the policy at issue are unchanged since the issuance of Open Records Letter No. 2006-10010, those portions may be withheld from the requestor in accordance with that ruling. To the extent those portions were subsequently revised, then Open Records Letter No. 2006-10010 does not serve as a previous determination for that information, and it must be disposed of in accordance with the instant ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). In Open Records Letter No. 2008-04023, we ruled that: (1) with the exception of basic information, a specified offense report may be withheld under section 552.108(a)(1) of the Government Code, and (2) the identifying information of the alleged sexual assault victim within the basic information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We have no indication that the law, facts, and circumstances on which Open Records Letter No. 2008-04023 was based have changed. Accordingly, the city may continue to rely on that ruling as a previous determination and release or withhold the specified report, which we have marked, in accordance with Open Records Letter No. 2008-04023. *See id.*

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 the doctrine of common-law privacy, which

²Although you raise section 552.1175, we note that section 552.117 is the proper exception to raise in this instance, as the police officer at issue is employed by the city's police department.

³We 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.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that relates to an individual's current involvement in the criminal justice system is not protected by privacy. *See* Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system).

The present request, in part, requires the city to compile unspecified police records concerning the individuals at issue. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy. We note that the city has submitted information that does not relate to the named individuals as suspects, arrestees, or criminal defendants and information reflecting the named individuals' current involvement in the criminal justice system. This information does not constitute criminal history information protected by common-law privacy and may not be withheld on that basis under section 552.101.

Section 552.101 also encompasses section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). We understand that the city is a civil service city under chapter 143 of the Local Government Code. In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a).⁴ *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case

⁴Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143.

resulting in disciplinary action are “from the employing department” when they are held by or in possession of the department because of its investigation into a police officer’s misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. *See* Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department’s personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that portions of the submitted information are maintained in the city police department’s internal personnel file concerning the officer at issue. We agree that the information submitted as Group 2 is confidential pursuant to section 143.089(g) of the Local Government Code. However, we note that remaining portions of the information that you claim are confidential under section 143.089(g) consist of general law-enforcement records that are maintained separate and apart from those found in the officer’s personnel file. The city may not engraft the confidentiality afforded to records under section 143.089(g) to a record that exists independently of an internal affairs investigation. Accordingly, the city must withhold Group 2 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, the remaining submitted information may not be withheld under section 143.089(g).

Section 552.101 also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies 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 (the “department”) maintains, except that the department 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 the department or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. We note that because the laws that govern the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. 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* ORD 565. Therefore, the city

must withhold the CHRI you have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 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, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that information contained in Groups 3, 4, 6, and 7 relate to pending criminal investigations and criminal prosecutions. Based upon this representation and our review of the submitted information, we conclude that section 552.108(a)(1) is applicable to Groups 3, 4, 6, and 7. *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 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186. The city must release basic information, including a detailed description of the offense and arrest information, even if this information does not literally appear on the front page of an offense or arrest report. *See id.* at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information also includes the identification and description of the complainant. *See Houston Chronicle*, 531 S.W.2d at 187; ORD 127. Accordingly, with the exception of basic front page information the city may withhold Groups 3, 6, and 7 under section 552.108(a)(1) of the Government Code.⁵

You state generally that Group 9 is excepted from disclosure under section 552.108. Although you do not refer to any particular subsection of section 552.108, you assert that release of the information would interfere with law enforcement by revealing investigative policies, techniques, and procedures. Thus, we understand you to raise section 552.108(b)(1). Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov’t Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect

⁵We note that the basic information contains the arrestee’s social security number. 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.

“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.” *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, 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). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (Gov’t Code § 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *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 not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). You indicate that release of the portions of the city’s police department’s policy manual that you have identified would interfere with law enforcement duties and endanger police officers. Based on your arguments and our review of the information at issue, we find that the release of portions of the department policy manual would interfere with law enforcement. However, much the information you seek to withhold consists of administrative policies and procedures of the department and generally known information. Thus, we find that you have failed to establish how public access to the remaining information at issue in Group 9 would interfere with law enforcement or endanger police officers. Accordingly, we conclude that the city may only withhold the portions of the Group 9 that we have marked under section 552.108(b)(1) of the Government Code.⁶ The remainder of Group 9 may not be withheld on the basis of section 552.108.

We also understand you to assert that the information you have identified in Group 9 is excepted from public disclosure under section 552.101 in conjunction with section 418.176(a)(2) of the Government Code. This section was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.176(a)(2) provides:

- (a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

⁶As our ruling for this information is dispositive, we need not address your remaining argument against disclosure.

...

(2) relates to a tactical plan of [an emergency response] provider[.]

Gov't Code § 418.176(a)(2). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under section 418.176. See Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

We note that section 418.176(a)(2) is applicable only to a tactical plan of an emergency response provider. See *id.* § 418.176(a)(1)-(3). The remaining portions of the manual are administrative and general law enforcement policies and procedures. You have not provided any arguments demonstrating that any remaining portion of the information at issue comprises a "tactical plan" for the purposes of section 418.176. We therefore conclude that the city may not withhold any of the information at issue under section 552.101 in conjunction with section 418.176 of the Government Code.

We note that some of the remaining information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employees made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). In this case, you do not inform us nor provide documentation showing if or when the employee at issue elected confidentiality under section 552.024. Thus, if the employees at issue timely elected to keep their personal information confidential, you must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117(a)(1) if the employees at issue did not make timely elections.

Section 552.117(a)(2) of the Government Code excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024. Gov't Code § 552.117(a)(2); see Open Records Decision No. 622 (1994). However, we note that the requestor is the attorney representing

the officer at issue. Thus, the requestor has a right of access under section 552.023 of the Government Code to any personal information relating to the officer that the city would otherwise be required to withhold from the public under section 552.117(a)(2). *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the city may not withhold any of the submitted information under section 552.117(a)(2).

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). However, some of the information marked under section 552.130 pertains to the requestor's client. Pursuant to section 552.023, the requestor has a right of access to his client's Texas motor vehicle record information. *See id.* § 552.023(b). Accordingly, the information pertaining to the requestor's client may not be withheld under section 552.130. However, the city must withhold the remaining Texas motor vehicle record information that you have marked under section 552.130.

Section 552.136 of the Government Code provides 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. The city must withhold the credit card numbers it has marked under section 552.136.

In summary, to the extent the city's police department's use of force policy is unchanged since the issuance of Open Records Letter No. 2006-10010, the city may rely on that ruling as a previous determination and withhold or release any such information in accordance with it. The city may continue to rely on Open Records Letter No. 2008-04023 as a previous determination and withhold or release any such information in accordance with that ruling. To the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold Group 2 under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the information you have marked under section 552.101 in conjunction with section 411 of the Government Code and federal law. With the exception of basic information, the city may withhold Groups 3, 6, and 7 under section 552.108(a)(1) of the Government Code. The city may withhold the information we have marked in Group 9 under section 552.108(b)(1) of the Government Code. If the employees at issue timely elected to keep their personal information confidential, you must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city must withhold the Texas motor vehicle information that does not pertain to the requestor's client under section 552.130 of the Government Code. The city must

withhold the credit card numbers you have marked under section 552.136 of the Government Code. The remaining submitted information must be released.⁷

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

⁷The submitted information contains social security numbers subject to section 552.147 of the Government Code. Section 552.147(b) 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. Gov't Code § 552.147. Section 552.147 is based on privacy concerns. Accordingly, pursuant to section 552.023, the requestor has a right of access to his client's social security number.

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,



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Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 306918

Enc. Submitted documents

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