



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2008

Ms. Mia Settle
Staff Counsel
Harris County Community Supervision and Corrections Department
49 San Jacinto
Houston, Texas 77002

OR2008-06612

Dear Ms. Settle:

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# 310317.

The Harris County Community Supervision and Corrections Department (the "department") received a request for copies of e-mail messages sent and received by four named individuals during a specified time period.¹ You state that the department does not have any responsive information concerning one of the named individuals.² You assert that some of the submitted information is not subject to the Act. You claim that the submitted information

¹You state that "because of the breadth of the request and the volume of responsive information, the department has attempted to clarify the request to no avail." See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you have submitted responsive information for our review and raised exceptions to disclosure for these documents, we consider the department to have made a good faith effort to identify information that is responsive to the request, and we will address the applicability of the claimed exceptions to the submitted information.

²We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 19787, writ dismissed); Open Records Decision No. 452 at 3 (1986).

is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.1175, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.³

You assert that Exhibit 11 consists of a judicial record and, therefore, is not subject to release under the Act. The Act generally requires the disclosure of information maintained by a "governmental body." However, while the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." See Gov't Code § 552.003(1)(A), (B). In determining whether a governmental entity falls within the judiciary exception to the Act, this office looks to whether the governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative, functions. See Open Records Decision No. 646 at 2-3 (1996); *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ). In this instance, the information at issue consists of e-mail records of department employees generated during a certain time period. Upon review, we find that Exhibit 11 was created and maintained by the department for administrative purposes. Therefore, Exhibit 11 is subject to the Act and may only be withheld if it is excepted from disclosure under the Act.

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. You have marked information you assert is subject to section 411.083 of the Government Code. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal and state law. 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). Upon review, we find none of the information you seek to withhold is CHRI subject to chapter 411. Accordingly, none may be withheld under section 552.101 on that basis. *Id.*

Section 552.101 of the Government Code 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). The type 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,

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.

attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Upon review, we agree that some of the submitted information contains highly intimate and embarrassing information and is not of legitimate public interest. Therefore, we have marked the information that is confidential and must be withheld under section 552.101. We find, however, that none of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Next, the department raises section 552.108 of the Government Code, which provides in part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

....

(b) An 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 is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the information at issue would interfere with law enforcement or prosecution. *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). However, section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992; writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982).

The department asserts that Exhibit 9 pertains to an active investigation by the Harris County Sheriff's Office (the "sheriff") into possible criminal activity, and states that the sheriff advises that release of this information could interfere with this investigation. Based upon your representations, and our review of the information at issue, we conclude that the release

of Exhibit 9 would interfere with the detection, investigation, or prosecution of crime. Therefore, you may withhold Exhibit 9 under section 552.108 of the Government Code.⁴

The department also informs us that Exhibit 11 “represents information that is related to” an investigation that has led to a prosecution by the United States Attorney’s Office for the Southern District of Texas (“USAO”). The department states that the USAO has advised the department that the prosecution is open and active. However, you do not inform us that the USAO objects to the release of this information, nor has the USAO argued to this office that the release of the information would interfere with the criminal prosecution. Therefore, Exhibit 11 may not be withheld under section 552.108 of the Government Code.

Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990); 531 at 2 (1989).

You state that Exhibit 10 contains internal law enforcement records establishing the policy for arrest in certain cases. Based on your representations and our review of the information at issue, we conclude that the department has established that release of the information in Exhibit 10 would interfere with law enforcement. Thus, Exhibit 10 may be withheld under section 552.108(b)(1) of the Government Code.

You state that portions of the submitted information may be excepted from disclosure under section 552.1175 of the Government Code. Section 552.1175 provides in part as follows:

(a) This section applies only to:

...

(6) officers and employees of a community supervision and corrections department established under Chapter 76 [of the Government Code] who perform a duty described by section 76.004(b);

...

⁴As our ruling for this information is dispositive, we need not address your remaining argument.

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). We note that section 552.1175 also encompasses a personal cellular telephone number, provided that the cellular phone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). You have submitted documentation showing that the employees at issue timely elected confidentiality under section 552.024. Accordingly, the department must withhold the personal information we have marked under section 552.1175 of the Government Code. However, the department may only withhold the cellular phone numbers we have marked under section 552.1175 if the employees paid for the cellular phones with their own funds. *Cf.* Open Records Decision No. 670 at 6 (2001).

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining "access device"). We have marked information that the department must withhold under section 552.136.

Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The department must withhold the personal e-mail addresses that you have marked, and the additional e-mail address that we have marked, under section 552.137 unless the owner of an e-mail address has affirmatively consented to its public disclosure.

In summary, the department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) Exhibit 9 under section 552.108(a)(1) of the Government Code; (3) Exhibit 10 under

section 552.108(b)(1) of the Government Code; (4) the information we have marked under section 552.1175; however the department may only withhold the cellular phone numbers we have marked if the cellular phones were paid for by the employees at issue; (5) the information we have marked under section 552.136 of the Government Code; and (6) the personal e-mail addresses you have marked, and the additional e-mail addresses we have marked under section 552.137 of the Government Code. The remaining submitted 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 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).

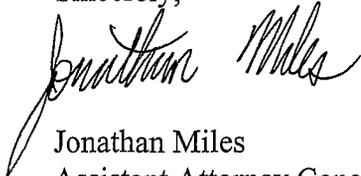
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in cursive script that reads "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 310317

Enc. Submitted documents

c: Mr. R. Burton Springer
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(w/o enclosures)