



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 19, 2008

Ms. Laura Garza Jimenez  
Nueces County Attorney  
Nueces County Courthouse  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2008-06820

Dear Ms. Jimenez:

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# 310368.

The Nueces County Sheriff's Department (the "department") received two requests from the same requestor for six categories of information: 1) all complaints filed by a named individual against two named individuals during a specified time period; 2) all complaints and calls for assistance from a specified address during a specified time period; 3) the final disposition of a young colt whose owner was investigated for abuse/neglect of the animal; 4) all complaints and reports filed on behalf of a named individual during a specified time period; 5) all information regarding a specified Internal Affairs investigation; and 6) all complaints filed by a named individual against the residents of a specified address during a specified time period. You state that there is no responsive information regarding the third category. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states 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 Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in subchapter F of chapter 411 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 DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411. Upon review, we find that no portion of the submitted information constitutes CHRI made confidential under federal law or chapter 411. Therefore, the department may not withhold any portion of the submitted information on that basis under section 552.101 of the Government Code.

Next, you claim that the information you have marked is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in pertinent part as follows:

(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; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

*Id.* § 552.108(a)(1)-(2), (c). A governmental body claiming section 552.108(a)(1) must reasonably explain 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). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You inform us that case numbers 08000183, 08000574, 08000575, 08000990, GO-2007-0544, GO-2008-0011, GO-2008-0012, GO-2008-0013, GO-2008-0015, and GO-2008-0078 relate to pending criminal investigations or prosecutions. Based upon your representation, we find that section 552.108(a)(1) is applicable to the information you have marked in these reports. *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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). You also claim that the cellular telephone numbers of police officers in the remaining submitted information are also excepted from disclosure under section 552.108(a)(1). In Open Records Decision No. 506 (1998), this office concluded that cellular phone numbers for individuals with specific law enforcement responsibilities may be withheld under section 552.108. You inform us that the cellular telephone numbers at issue are assigned to department police officers who “are ‘on call’ twenty-four hours a day and the cell phones are used for calls for assistance from other county officers.” You assert that the release of the cellular telephone numbers at issue would interfere with law enforcement and crime prevention. Based on your representations and our review of the information at issue, we conclude that the department may withhold the cellular telephone numbers we have marked under section 552.108 of the Government Code.

You state that case numbers 08000079, GO-2007-0534, and GO-2007-0548 relate to cases that concluded in a final result other than a conviction or deferred adjudication. Therefore, section 552.108(a)(2) is applicable to the information you have marked in these reports.

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. Thus, with the exception of basic information, the department may withhold the information you have marked in case numbers 08000183, 08000574, 08000575, 08000990, GO-2007-0544, GO-2008-0011, GO-2008-0012, GO-2008-0013, GO-2008-0015, and GO-2008-0078 pursuant to section 552.108(a)(1), and the information you have marked in case numbers 08000079, GO-2007-0534, and GO-2007-0548 pursuant to section 552.108(a)(2).

Section 552.130 of the Government Code 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.” *Id.*

§ 552.130(a)(1), (2). The department must withhold the Texas motor vehicle information we have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold the information you have marked pursuant to sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. The department also may withhold the cellular telephone numbers we have marked under section 552.108 of the Government Code. The department must withhold the Texas motor vehicle information we have marked under section 552.130 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 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 black ink, appearing to be 'B. Diener', with a long horizontal flourish extending to the right.

Benjamin A. Diener  
Assistant Attorney General  
Open Records Division

BAD/jb

Ref: ID# 310368

Enc. Submitted documents

c: Ms. Angelina R. Garcia  
11141 Annville Road  
Corpus Christi, Texas 78410  
(w/o enclosures)