



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 17, 2008

Ms. Janis K. Hampton
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2008-09737

Dear Ms. Hampton:

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# 316114.

The Bryan Police Department (the "department") received a request for "electronic communications (e-mails) sent or received from all mobile computer-equipped police patrol units" during a specified time period. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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. We note that a portion of the requested information relates to sex offenders who are subject to registration under chapter 62 of the Code of Criminal Procedure, which is encompassed by section 552.101. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the Department of Public Safety ("DPS") sex offender registration database:

the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size;

¹We 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.

home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS.

See Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number, driver's license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). We have marked information subject to article 62.005, and the department must withhold or release this information in accordance with article 62.005(b).

Section also 552.101 encompasses information made confidential by other statutes, such as section 58.007 of the Family Code. The relevant language of section 58.007 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). You state that a portion of the information in Exhibit B consists of law enforcement records pertaining to a juvenile who engaged in conduct indicating a need for supervision after September 1, 1997. *See id.* § 51.03(a)(3) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from his home without

the consent of his parent or guardian for a substantial length of time or without intent to return"). Because none of the exceptions in section 58.007 apply, we agree that a portion of the information in Exhibit B, which we have marked, is confidential under section 58.007(c) and must be withheld pursuant to section 552.101.

Section 552.101 also 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 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 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 chapter 411, subchapter F. However, section 411.081(b) allows a police department to disclose to the public CHRI "that is related to the offense for which a person is involved in the criminal justice system." *Id.* § 411.081(b). We also note that driving record information is not CHRI for the purposes of chapter 411. *Id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Based upon your representations and our review, we conclude that you must withhold the CHRI that we have marked under chapter 411 of the Government Code. However, it appears that the remaining information obtained from DPS pertains to active warrants that indicate individuals' current involvement in the criminal justice system, or to driving record information. Thus, we conclude that no portion of the remaining information may be withheld under chapter 411 of the Government Code.

Section 552.101 further encompasses the doctrine of common-law privacy, which 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). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find that a portion of the submitted information consists of personal financial information. Further, we find that there is no legitimate public interest in this information. Accordingly, the department must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy.

Finally, you argue that a portion of the remaining information consists of Texas motor vehicle record information that is confidential under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. We note that section 552.130 does not encompass motor vehicle record information of other states. Thus, with the exception of the information we have marked for release, the department must withhold the information it has marked, along with the additional information we marked, under section 552.130 of the Government Code.

In summary, we have marked information subject to article 62.005, and the department must withhold or release this information in accordance with article 62.005(b). You must withhold the information we have marked under section 552.101 in conjunction with section 58.007 of the Family Code. You must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 of the Government Code. You must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Except for the information we have marked for release you must withhold the Texas motor vehicle record information marked under section 552.130 of the Government Code. The remaining information must be released.²

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). If the governmental body does not file suit over 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

²We note that the submitted information contains social security numbers. 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.

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 316114

Enc. Submitted documents

c: Mr. Jim James
P.O. Box 1146
Bryan, Texas 77806
(w/o enclosures)