



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2008

Mr. Joseph Gorfida, Jr.  
Attorney  
City of Richardson  
P. O. Box 831078  
Richardson, Texas 75083-1078

OR2008-12425

Dear Mr. Gorfida:

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# 319693.

The Richardson Police Department (the "department") received a request for reports on all the bank robberies in the City of Richardson for a specified time period. You state that you will provide the requestor with some of the responsive information. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We understand you to claim that the submitted information is excepted from disclosure under sections 552.108(a)(1), (a)(2) and (b)(1) of the Government Code. Section 552.108 provides in part:

(a) 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:

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

(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[.]

...

(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 [required public disclosure] if:

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

Gov't Code § 552.108(a)(1)-(2), (b)(1). Generally speaking, sections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. The submitted information consists of numerous unrelated police reports. You have not marked any of the documents to indicate which exception applies to which parts of the submitted information. Therefore, we find that you have failed to establish how sections 552.108(a)(1) and 552.108(a)(2) apply to the submitted information. Accordingly, none of the information may be withheld on this basis.

Next, this office has stated that under the statutory predecessor to section 552.108(b)(1), a governmental body may withhold information that would reveal law enforcement techniques or procedures. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under predecessor to section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (predecessor to section 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).

To claim this exception, a governmental body must explain how and why release of the requested information would interfere with law enforcement and crime prevention. Gov't Code §§ 552.108(a)(1), (b)(1), .301; Open Records Decision No. 562 at 10 (1990). Generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under predecessor to section 552.108), 252 at 3 (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

You state that the submitted materials contain information that would "allow members of the general public to anticipate weaknesses in patrol and investigative operations and certain procedures of financial institutions; endanger the safety of officers and citizens; undermine crime prevention efforts; and jeopardize investigative and prosecution efforts." You further state "[r]elease of the documents would also reveal or tend to reveal the total amount of currency held by a financial institution and/or at a single teller station at any given time." Upon review of your arguments and the submitted information, we find that the department has failed to demonstrate how section 552.108(b)(1) is applicable to any portion of the submitted information. Accordingly, we conclude that the department may not withhold any portion of the submitted information on this basis.

Section 552.101 of the Government Code exempts 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 section 58.007 of the Family Code.<sup>1</sup> Section 58.007 provides in part:

(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

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<sup>1</sup>This office will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). Report 05-111412, which we have marked, involves juvenile delinquent conduct occurring after September 1, 1997. None of the exceptions in section 58.007 apply. Therefore, the report at issue is confidential pursuant to section 58.007(c) of the Family Code and the department must withhold it under section 552.101 of the Government Code.

Section 552.101 also encompasses information protected by other statutes, including criminal history record information ("CHRI"). 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 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. 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. 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 Government Code chapter 411, subchapter F. *See* Gov't Code § 411.082(2)(B) (term CHRI does not include driving record information). We have marked the CHRI in the submitted information that the department must withhold under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 also 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also 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).

Furthermore, 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). However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. Cf. Gov't Code § 411.082(2)(B) (criminal history information does not include driving record information). Also, an individual's current involvement in the criminal justice system, including active warrant information, does not constitute criminal history information for the purposes of section 552.101. Accordingly, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Thus, the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

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 record information we have marked under section 552.130 of the Government Code.

Finally, we note that the submitted information contains e-mail addresses subject to section 552.137 of the Government Code. This section excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). We note that section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental body maintains for one of its officials or employees. We have marked the e-mail addresses that are not of a type specifically excluded by section 552.137(c). You do not inform us that these individuals have consented to the release of their e-mail addresses. Therefore, the

department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

In summary, under section 552.101 of the Government Code, the department must withhold: 1) report 05-111412 in conjunction with section 58.007(c) of the Family Code, 2) the CHRI we have marked information in conjunction with federal law and chapter 411 of the Government Code, and 3) the information we have marked in conjunction with common-law privacy. The department must also withhold the personal information we have marked under section 552.117(a)(2) of the Government Code, the Texas motor vehicle record information we have marked under section 552.130 of the Government Code, and the e-mail addresses we have marked under section 552.137 of the Government Code. As the department makes no further arguments against disclosure, the remaining information must be released to the requestor.<sup>2</sup>

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 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).

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<sup>2</sup>We note that the information being released 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 officer under the Act. Gov't Code § 552.147(b).

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,



Benjamin A. Diener  
Assistant Attorney General  
Open Records Division

BAD/jb

Ref: ID# 319693

Enc. Submitted documents

c: Mr. Michael Kleyman  
6901 Cannon Falls Drive  
Plano, Texas 75024  
(w/o enclosures)