



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2008

Mr. Jonathan T. Koury
Assistant City Attorney
City of Llano
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

OR2008-16137

Dear Mr. Koury:

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# 328452.

The City of Llano (the "city"), which you represent, received a request for reports filed by specified individuals relating to a certain individual during a specified time period. You claim that portions of the submitted documents are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that portions of certain reports are subject to section 552.108. Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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(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). You state that the report numbered M08-434 is related to a pending criminal prosecution. You also state that the release of the information you have marked would interfere with the prosecution of the case. Based on your representation and our review, we find that section 552.108(a)(1) is applicable to the information you have marked in report M08-434.

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). Accordingly, the city may withhold the marked information under section 552.108(a)(1).¹

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). 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 state that the reports numbered M06-415 and M06-259 pertain to investigations that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the information you have marked in these reports. Accordingly, the city may withhold the marked information in reports M06-415 and M06-259 under section 552.108(a)(2).²

Next, you claim that some of the remaining records contain information that is confidential by law. Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”), which is confidential. 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. Thus, 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 id.* § 411.082(2)(B) (term CHRI does not include driving record information). We find that

¹As our ruling is dispositive for this information, we need not address your claims for the driver's license and social security numbers contained in this information.

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a portion of the remaining records is CHRI generated by TCIC or NCIC. Accordingly, the city must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.083 of the Government Code. However, the remaining information is not CHRI taken from these sources, and may not be withheld on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) 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. After reviewing the submitted reports, we have marked a small portion of information that is highly intimate or embarrassing and not of legitimate public interest. The city must withhold the marked information under section 552.101 in conjunction with common-law privacy.

You claim that some of the remaining information is subject to section 552.130 of the Government Code. This exception provides 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). We note that the requestor is the spouse of one of the individuals whose driver's license number is at issue. If the requestor is his wife's authorized representative, the requestor will have a right of access to his wife's driver's license number under section 552.023 of the Government Code. *See id.* § 552.023(a) (providing that person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests). If the requestor is not his wife's authorized representative, the city must withhold the wife's driver's license number, as well as the Texas driver's license numbers of the other individuals pursuant to section 552.130 of the Government Code.

Finally, you assert that the remaining documents contain social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. The city has marked the social security number of the requestor's wife. As noted above, the requestor may be his wife's authorized representative. *Id.* § 552.023(a). If the requestor is the authorized representative of his wife, he has a right of access to his wife's social security number, and it may not be withheld under section 552.147. If the requestor is not his wife's authorized representative, the city may withhold the wife's social security number, as well as the social security numbers of the other individuals pursuant to section 552.147 of the Government Code.

In summary, the city must withhold the marked CHRI under section 552.101 in conjunction with section 411.083 and the information we have marked under section 552.101 in

conjunction with common-law privacy. The department may withhold the marked information in the incident reports under section 552.108. If the requestor is the authorized representative of his wife, he has a right of access to his wife's driver's license and social security numbers and these numbers must be released to the requestor. If the requestor is not his wife's authorized representative, the department must withhold the Texas driver's license numbers under section 552.130 and may withhold the social security numbers under section 552.147. The remaining 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). 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).

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,

Handwritten signature of Olivia A. Maceo in cursive.

Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 328452

Enc. Submitted documents

c: Requestor
(w/o enclosures)