



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2010

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-09354

Dear Ms. Armstrong:

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# 384125 (DPD ORR No. 2010-3381).

The Dallas Police Department (the "department") received a request for all written reports and audio and video recordings relating to the arrest of a former Dallas police officer in 2004. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you submitted.²

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 exception encompasses information that other statutes make

¹Although you do not specifically claim an exception to disclosure under section 552.130, you have marked information the department seeks to withhold under that section. Accordingly, we will address section 552.130, which is a mandatory exception that may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

confidential. Criminal history record information ("CHRI") obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions."³ Gov't Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. See Open Records Decision No. 565 at 10-12 (1990); see generally Gov't Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. See *id.* § 411.089(b). The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. See *id.* at 681-82. A compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

We find that the compilation of criminal history we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. The department must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy. Although you have marked other criminal history information the department seeks to withhold on privacy grounds, we note that the information in question

³We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. See Gov't Code § 411.082(2).

pertains to a peace officer rather than a private citizen. Because the public has a legitimate interest in a peace officer's criminal history, we conclude that the peace officer's criminal history is not protected by common-law privacy and may not be withheld under section 552.101.

Common-law privacy also encompasses certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 545 at 4 (1990)* (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), *523 at 4 (1989)* (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body). The personal financial information we have marked is intimate or embarrassing and not a matter of legitimate public interest. The department must withhold that information under section 552.101 in conjunction with common-law privacy.

The department also seeks to withhold information relating to confidential informants under section 552.101 in conjunction with common-law privacy and "special circumstances." The Third Court of Appeals recently ruled, however, that the "special circumstances" exception found in past attorney general open records decisions directly conflicts with Texas Supreme Court precedent regarding common-law privacy. *See Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. and Hearst Newspapers, L.L.C.*, 287 S.W.3rd 390 (Tex. App.—Austin 2009, pet. filed). The court of appeals ruled that the two-part test set out in *Industrial Foundation* is the "sole criteria" for determining whether information can be withheld under common-law privacy. *Id.* at 394; *see also Indus. Found.*, 540 S.W.2d at 686. In this instance, the information at issue is related to confidential law enforcement informants. We find that this information is not highly intimate or embarrassing. Therefore, as the first element of the *Industrial Foundation* test for common-law privacy is not satisfied in this instance, we conclude that the information relating to the confidential informants is not confidential under common-law privacy and may not be withheld on that basis under section 552.101 of the Government Code.

Next, we address your claims under section 552.108 of the Government Code. Section 552.108(a)(1) 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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Under section 552.108(a)(1), a governmental body must demonstrate that release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108(b)(1) excepts from disclosure “[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). A governmental body claiming section 552.108(b)(1) must explain how and why release of the information at issue would interfere with law enforcement and crime prevention. *See Open Records Decision No. 562 at 10 (1990)*. The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques, but was not applicable to generally known policies and procedures. *See, e.g., Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution); but see Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known)*.

You contend that release of some of the submitted information could “enable suspects or others to identify or track a particular informant or undercover officer.” You also contend that release of some of the submitted information “would provide suspects or others with specified tactical procedures used during [an] investigation[.]” Additionally, you argue that release of some of the submitted information could “jeopardize the safety of the confidential informant and the officers” and “help suspects anticipate law enforcement actions prior to completion of . . . investigations[.] permitting the suspects to flee, destroy evidence, or move their operations to other locations.” You also generally argue that release of some of the submitted information “would permit suspects to avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this [s]tate.” Having considered your arguments and reviewed the information at issue, we conclude that the information relating to the confidential informants we have marked in the submitted documents, including the representative sample of such information in the submitted cellular telephone account records, may be withheld under section 552.108(b)(1). We note that the submitted videos contain images of one informant’s face. We conclude that the images of the informant’s face that appear in the videos also may be withheld under section 552.108(b)(1). If the department has no means of redacting that information from a video, then the entire video may be withheld under section 552.108(b)(1). We find that the department has not sufficiently demonstrated that the release of any of the remaining information at issue would interfere with the detection, investigation, or prosecution of

crime. *See* Gov't Code § 552.108(a)(1). We also find that the department has not established that the release of any of the remaining information at issue would interfere with law enforcement or crime prevention. *See id.* § 552.108(b)(1). We therefore conclude that the department may not withhold any of the remaining information under section 552.108 of the Government Code.

You also claim section 552.117 of the Government Code for some of the remaining information. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You seek to withhold information relating to a former officer of the department under section 552.117(a)(2). The submitted records reflect, however, that the former officer concerned is no longer a licensed peace officer. We therefore conclude that the department may not withhold any of the submitted information under section 552.117(a)(2) of the Government Code.

We note that section 552.117(a)(1) may be applicable to some of the information that pertains to the former officer. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Therefore, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 that the information be kept confidential. Thus, the department must withhold the information we have marked under section 552.117(a)(1) to the extent that the former officer timely requested confidentiality for the marked information under section 552.024. Although these same types of information also appear in the submitted records of the former officer's arrest, we note that the department maintains those records as a law enforcement agency and not as the former officer's employer. Therefore, section 552.117 is not applicable to information pertaining to the former officer that appears in the records of his arrest, and the department may not withhold any of that information under section 552.117(a)(1).⁴

⁴We note that the submitted records contain the former officer's social security number. 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.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We agree that the department must withhold the Texas driver's license and motor vehicle information you have marked under section 552.130. We have marked additional information that also must be withheld under this exception. We note that the submitted videos also contain images of Texas license plate numbers that must be withheld under section 552.130. If the department has no means of redacting that information, then the videos must be withheld in their entirety.

Section 552.136 of the Government Code provides in part 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We agree that the department must withhold the debit card number you have marked under section 552.136. We have marked a cellular telephone account number that also must be withheld under this exception. We note that the remaining information includes the former officer's employee number. We understand that this same number is used for an employee's city credit union account. Accordingly, the department must withhold the former officer's employee number under section 552.136 if his employee number is related to an existing city credit union account.

Lastly, we note that some of the submitted information appears to be protected by copyright law. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

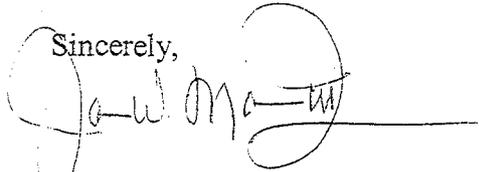
In summary: (1) under section 552.101 of the Government Code, the CHRI we have marked must be withheld under federal law and subchapter F of chapter 411 of the Government Code and the criminal history and personal financial information we have marked must be withheld under common-law privacy; (2) under section 552.108(b)(1) of the Government Code, the department may withhold the information we have marked in the submitted documents, along with the images of the informant's face that appear in the submitted videos, unless the department has no means of redacting the video, in which case the entire video may be withheld; (3) the information we have marked under section 552.117(a)(1) of the Government Code must be withheld to the extent that the former officer timely requested confidentiality for the marked information under section 552.024 of the Government Code; (4) the Texas driver's license and motor vehicle information you have marked, the Texas driver's license and motor vehicle information we have marked, and the images of Texas license plate numbers that appear in the videos must be withheld under section 552.130 of

the Government Code, unless the department has no means of redacting information from a video, in which case the entire video must be withheld; and (5) the debit card number you have marked and the cellular telephone account number we have marked must be withheld under section 552.136 of the Government Code, along the former officer's employee number if it is related to an existing city credit union account.⁵ The rest of the submitted information must be released, but any information that is protected by copyright may only be released in compliance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/tp

Ref: ID# 384125

Enc: Submitted information

c: Requestor
(w/o enclosures)

⁵We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas driver's license number, a Texas license plate number, and the portion of any video depicting a discernible Texas license plate number under section 552.130 and a debit card number under section 552.136.