



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2010

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law & Police Section
Dallas Police Department
1400 South Lamar
Dallas, Texas 75215

OR2010-09895

Dear Ms. McClellan:

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# 385589 (DPD Request No. 2010-3267).

The Dallas Police Department (the "department") received a request for information pertaining to a specified March 26, 2010 arrest, including any reports, notes by officers at the scene, communications, recordings, and certain information about each officer involved in the arrest. The requestor also seeks the department's policies, orders, and guidelines used in the retention of those records. You claim the portions of the submitted information you marked are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We note you did not submit the requested records retention policies, orders, or guidelines. To the extent information responsive to this portion of the request existed on the date the

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.

department received the request, we assume it has been released. If not, then you must release it at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted arrest report includes the arrestee's intoxilyzer results. Section 724.018 of the Transportation Code provides that upon the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018. As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). In this instance, it appears the requestor is the arrestee's attorney. Therefore, if the requestor is the arrestee's attorney, the department must release the intoxilyzer results we marked in the submitted arrest report pursuant to section 724.018 of the Transportation Code. If the requestor is not the arrestee's attorney, we consider the submitted intoxilyzer results with the remaining portions of the arrest report.

You marked the arrest report and video recordings under section 552.108(a)(1) of the Government Code. This section 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted arrest report and videos relate to a pending criminal investigation. Based on this representation and our review, we determine release of this information at this time 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).

We note, however, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes the arrestee's social security number. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the submitted arrest report and video recordings under section 552.108(a)(1) of the Government Code.²

²As our ruling is dispositive for this information, we need not address your remaining argument against disclosure of these records, except to note basic information does not include Texas motor vehicle record information subject to section 552.130 of the Government Code.

You claim the arrestee's social security number is excepted under section 552.147 of the Government Code. 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. Gov't Code § 552.147. However, if the requestor is the arrestee's attorney, then he has a right of access to information pertaining to his client that would otherwise be withheld on the basis of privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Because section 552.147 is based on principles of privacy, if the requestor is the arrestee's attorney, then his client's social security number must be released. If the requestor is not the attorney for the arrestee, this number may be withheld under section 552.147 of the Government Code. In either case, the remaining basic information must be released.

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 information made confidential by statutes, such as criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). 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 Government Code chapter 411, subchapter F. Upon review, we agree the pages you marked are criminal history printouts that were generated by the NCIC. We conclude this information is confidential CHRI the department must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

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

established. *Id.* at 681-82. This office has found 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. U.S. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You contend some of the remaining information constitutes the compiled criminal history of individuals and is therefore protected under common-law privacy. Upon review, we have marked the portions of the remaining information that reveals a compilation of these individuals' criminal histories. We find this marked information to be of no legitimate public interest, and the department must withhold it under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you marked pertains to single arrests, and thus is not a compilation of criminal history that would implicate the arrested individuals' rights to privacy. This information may not be withheld under section 552.101 in conjunction with common-law privacy.

The submitted information reflects that some of the single arrests may have been expunged from the arrested individuals' records. Section 552.101 of the Government Code also encompasses article 55.03 of the Code of Criminal Procedure. Article 55.03 concerns the effect of an expunction order and provides the following:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in relevant part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who

knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Id. art. 55.04, § 1. This office has previously determined the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). You have not provided this office with expunction orders pertaining to these arrests. Thus, if the department possesses these orders, you must withhold any submitted information pertaining to records the court has ordered expunged under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. If the department does not possess these orders, the information pertaining to these arrests must be released.

You claim portions of the remaining information are protected under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, 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 and 552.1175 of the Government Code.³ *Id.* § 552.117(a)(2). We note that a post office box number is not a “home address” for purposes of section 552.117. *See id.*; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at *home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added). The department must withhold the officers’ home address, home telephone number, social security number, and family member information we have marked under section 552.117(a)(2) of the Government Code.⁴

You claim some of the remaining information is excepted under section 552.130 of the Government Code, which 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. *Id.* § 552.130(a)(1), (2). Upon review, we agree the department must withhold the Texas motor vehicle record information you have marked in the submitted applications, as well as the information we marked, under section 552.130 of the Government Code.

³“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

⁴We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes a police department to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision.

You marked employee identification numbers in the remaining information under section 552.136 of the Government Code, which provides 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”). You inform us an employee’s identification number is used in conjunction with one additional digit to access the employee’s credit union account. Thus, we find the department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

You claim that the remaining information contains telephone number and address information subject to chapter 772 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 772.318 of the Health and Safety Code, which is applicable to emergency 9-1-1 districts established in accordance with chapter 772 of the Health and Safety Code. *See* Open Records Decision No. 649 (1996). This section makes originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. We understand the City of Dallas is part of an emergency communication district established under section 772.318. However, upon review of the submitted information, it does not contain the telephone number or address of an individual calling 9-1-1. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

In summary, if the requestor is the arrestee’s attorney, the department must release the intoxilyzer results we marked in the submitted arrest report pursuant to section 724.018 of the Transportation Code. With the exception of basic information, the department may withhold the remaining portions of the arrest report, as well as the submitted video recordings, under section 552.108(a)(1) of the Government Code. In releasing basic information, the department may withhold the arrestee’s social security number under section 552.147 of the Government Code only if the requestor is not the arrestee’s attorney. The department must withhold the criminal history printouts you marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code, as well as the criminal history information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the department possesses expunction orders, you must withhold any submitted information pertaining to records the court has ordered expunged under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. The department must withhold the police officers’ home address, home telephone number, social security number, and family member information we have marked under section 552.117(a)(2) of the Government Code. The department must withhold the Texas motor vehicle record information you have marked in the submitted applications, as well as the information we marked, under section 552.130 of the Government Code, and the employee identification numbers you have marked under section 552.136 of the Government Code. The remaining submitted information must be released.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 385589

Enc. Submitted documents

cc: Requestor
(w/o enclosures)