



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-04888

Dear Ms. Evans:

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# 449531 (GC# 19285).

The Houston Police Department (the "department") received a request for information pertaining to incident report numbers 018525891 and 101168791. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, you inform us portions of Exhibit 2 were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2005-09202

¹We assume 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.

(2005). In this ruling, we concluded the department must withhold certain information under sections 552.130 and 552.147 of the Government Code and release the remaining information. However, we note section 552.147 of the Government Code was amended by the 80th Legislature and section 552.130 of the Government Code was amended by the 82nd Legislature; thus, these laws have changed. *See* Act of March 21, 2007, 80th Leg., R.S., ch. 3, § 1, 2007 Tex. Gen. Laws 3, 3; Act of May 24, 2011, 82nd Leg., R.S., ch. 927, § 4, 2011 Tex. Gen. Laws 2344, 2345; *see also* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, the department may not continue to rely on Open Records Letter No. 2005-09202 as a previous determination with respect to the information at issue under sections 552.130 and 552.147.

As stated above, Open Records Letter No. 2005-09202 ordered release of certain information. Additionally, the submitted information reveals there was an additional request for information pertaining to the information at issue in Exhibit 2. We note section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). You seek to withhold the information at issue under sections 552.101 and 552.108 of the Government Code. However, pursuant to section 552.007, the department may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential by law. Section 552.108 does not prohibit the release of information or make information confidential. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). Accordingly, to the extent any portion of Exhibit 2 was at issue in Open Records Letter No. 2005-09202 or the other request for information, the department may not now withhold such information under section 552.108. You also claim Exhibit 2 is confidential under section 552.101 of the Government Code. Further, we note portions of Exhibit 2 may be subject to sections 552.1175 and 552.130 of the Government Code.² Because these sections make information confidential by law, we will consider the applicability of sections 552.101, 552.1175, and 552.130 to the previously released information. To the extent the information in Exhibit 2 was not at issue in Open

²The Office of the Attorney General 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).

Records Letter No. 2005-09202 or the other request for information, we will address your argument under section 552.108.

We note portions of Exhibit 3 consist of court-filed documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code for this information, this is a discretionary exception that may be waived and does not make information confidential under the Act. *See id.* § 552.007; ORDs 665 at 2 n.5, 177 at 3. As such, section 552.108 does not make information confidential for the purposes of section 552.022(a)(17), and the department may not withhold the court-filed documents we have marked on that basis. However, you also raise section 552.101 of the Government Code, which does make information confidential under the Act. Accordingly, we will address the applicability of section 552.101 to the information subject to section 552.022(a)(17).

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." Gov't Code § 552.101. You raise section 552.101 in conjunction with former section 51.14 of the Family Code for Exhibits 2 and 3. Prior to its repeal by the Seventy-fourth Legislature, former section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. The conduct at issue in Exhibits 2 and 3 concern incidents that occurred prior to January 1, 1996. Accordingly, we address your arguments under former section 51.14 of the Family Code. Section 51.14 applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- 1) a juvenile court having the child before it in any proceeding;
- 2) an attorney for a party to the proceeding; and
- 3) law-enforcement officers when necessary for the discharge of their official duties.

Id. § 51.14. You claim Exhibits 2 and 3 involve juveniles engaged in delinquent conduct. Upon review, we agree Exhibit 3 and the information we have marked in Exhibit 2 involve juveniles engaged in delinquent conduct before January 1, 1996. *See id.* § 51.03 (defining “delinquent conduct”). Thus, Exhibit 3 and the information we have marked in Exhibit 2 are confidential under former section 51.14 and must be withheld under section 552.101 of the Government Code.³ However, we note remaining information in Exhibit 2 involves a defendant who was certified and prosecuted as an adult for the offense at issue. Because the defendant in this instance was tried as an adult, we conclude the remaining information in Exhibit 2 is not confidential under former Family Code section 51.14(d). Accordingly, none of the remaining information in Exhibit 2 may be withheld under section 552.101 on the basis of former section 51.14.

We next address your argument under section 552.108(a)(1) of the Government Code for the remaining information in Exhibit 2 that was not at issue in Open Records Letter No. 2005-0920 or the other previous request for information. 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the information at issue relates to a case that resulted in conviction, but the defendant in that proceeding has filed a post-conviction writ. You assert release of the information at issue would interfere with the “matters before the court.” However, post-conviction writ proceedings do not establish the existence of an ongoing criminal investigation or prosecution for the purposes of section 552.108(a)(1). Accordingly, the department may not withhold any of the remaining information under section 552.108(a)(1).

Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (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 the Department of Public Safety (“DPS”) maintains, except 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

³As our ruling is dispositive for this information, we do not address your remaining arguments against its disclosure.

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. Similarly, 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). Upon review, we find the information we have marked in Exhibit 2 consists of CHRI the department must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

We note the remaining information in Exhibit 2 contains fingerprints. Section 552.101 also encompasses section 560.003 of the Government Code. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). We have marked the fingerprints in Exhibit 2. You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the marked fingerprint information in this instance. Therefore, the department must withhold the information we have marked in Exhibit 2 under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses 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). The type of information considered intimate or 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. *Id.* at 683. This office has found 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)*. This office has also 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). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. We note,

however, that records relating to routine traffic violations are not considered criminal history information. C. Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). Further, because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). Upon review, we find the information we have marked in Exhibit 2 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked in Exhibit 2 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information in Exhibit 2 includes information that may be subject to section 552.1175 of the Government Code, which provides in part:

(a) This section applies only to:

1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

1) chooses to restrict public access to the information; and

2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). Section 552.1175 is also applicable to personal pager and cellular telephone numbers, provided the cellular telephone service or pager service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). We have marked personal information pertaining to individuals who may currently be licensed peace officers. Accordingly, if the individuals at issue are currently licensed peace officers and the peace officers elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have marked under section 552.1175 of the Government Code. However, the department

may withhold the cellular and pager numbers we have marked only if the services are not paid for with government funds. If the individuals at issue are not currently licensed peace officers or no objection is made, the department may not withhold the information we have marked under section 552.1175.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or permit, title or registration, or a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue a personal identification document. *See Gov't Code § 552.130(a)*. We note section 552.130 does not encompass motor vehicle record information that pertains exclusively to a deceased individual. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); ORD 272 at 1. Upon review, we find the department must withhold the information we have marked in Exhibit 2 under section 552.130 of the Government Code.

In summary, Exhibit 3 and the information we have marked in Exhibit 2 must be withheld under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. The department must withhold the information we have marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with (1) chapter 411 of the Government Code and federal law; (2) section 560.003 of the Government Code; and (3) common-law privacy. If the individuals at issue are currently licensed peace officers and the peace officers elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have marked under section 552.1175 of the Government Code. However, the department may withhold the cellular and pager numbers we have marked only if the services are not paid for with government funds. The department must withhold the information we have marked in Exhibit 2 under section 552.130 of the Government Code. The remaining information must be released.⁴

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

⁴We note the remaining 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. *See Gov't Code § 552.147(b)*.

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,


Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 449531

Enc. Submitted documents

c: Requestor
(w/o enclosures)