



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2012

Ms. Elizabeth Lutton
Legal Advisor
Dallas County Sheriff's Department
133 North Riverfront Boulevard, LB-31
Dallas, Texas 75207-4313

OR2012-16215

Dear Ms. Lutton:

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# 467481.

The Dallas County Sheriff's Department (the "department") received a request for the disciplinary file, internal investigations, and Texas Public Information Act requests pertaining to the requestor's client. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We first address your argument that the General Orders of the department prohibit the release of a pending internal investigation. 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. A governmental body may not promulgate a rule that designates information as being confidential, so as to bring the information within the scope of section 552.101 of the Government Code, unless the governmental body has been given specific statutory authority to do so. *See* Open Records Decision Nos. 594 at 2-3 (1991) (city ordinance cannot operate to make information confidential when not excepted by Act), 263 (1981) (city ordinance may not conflict with Act); *see also Indus.*

¹Although you raise section 552.101 of the Government Code for dates of birth, we note section 552.102 of the Government Code is the proper exception to raise for the substance of your argument.

Found. v. Tex. Indus. Accident Bd., 540 S.W.2d 668, 677 (Tex. 1976) (agency rule may not make information confidential in circumvention of Act). You have not directed our attention to any law, nor are we aware of any, that authorizes the department to make information confidential for purposes of the Act. Thus, the department has failed to demonstrate how the General Orders constitute “law” for purposes of section 552.101 of the Government Code, and none of the submitted information may be withheld on that basis. *See* Gov’t Code § 552.101.

Section 552.108(b)(1) of the Government Code 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[.]” *Id.* § 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Gov’t Code § 552.301(e)(1)(A) (providing that governmental body must adequately explain how information at issue falls within scope of claimed exception). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See e.g.*, Open Records Decision Nos. 531(1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (Gov’t Code § 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). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the submitted information relates to a pending internal affairs investigation. We note section 552.108 generally is not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d at 325-26; *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You state release of the information at issue would interfere with law enforcement on the basis that the internal affairs investigation is pending and “no decision has been made [whether the investigation] will be referred to the [c]riminal [i]nvestigation [s]ection for a criminal investigation.” However, you do not inform us, and the submitted documents do not reflect, what criminal matters are at issue or could arise from the deputy’s alleged misconduct in the pending internal affairs investigation. Accordingly, we find you have failed to explain how

the release of the information at issue would interfere with a particular criminal investigation or prosecution. *See* Open Records Decision Nos. 372 at 4 (1983) (stating that where incident involving criminal conduct remains under active investigation, section 552.108 may be invoked by any proper custodian of related information), 493 at 2 (1988), 272 (1981); Attorney General Opinion MW-575 at 1-2 (1982) (non-law enforcement agency may claim statutory predecessor to section 552.108 as to open file where reasonable probability of criminal prosecution exists); *see also* Open Records Decision No. 582 (1990) (finding prospects for criminal prosecution too speculative to withhold information under predecessor to section 552.108). Further, you do not explain, and we are unable to discern from the submitted information, how release of any of the administrative information would interfere with law enforcement and crime prevention. Consequently, you have failed to demonstrate the applicability of section 552.108(b)(1) to the information at issue, and none of it may be withheld on that basis.

Section 552.101 of the Government Code encompasses information other statutes make confidential, such as section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center.² 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.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* Open Records Decision No. 565 (1990). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information in accordance with 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 only release CHRI to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). 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 find no portion of the submitted information constitutes CHRI, and none of it may be withheld under section 552.101 in conjunction with chapter 411.

Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides

²Although you assert release of the information at issue is prohibited by section 411.085 of the Government Code, that provision provides the penalties for the “Unauthorized Obtaining, Use, or Disclosure of Criminal History Record Information.” Gov’t Code § 411.085.

two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). The requestor has not provided the city with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the CR-3 accident report forms we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation 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). This office has found common-law privacy encompasses certain types of personal financial information. *See* Open Records Decision Nos. 545 (1990) (common-law privacy protects personal financial information not related to a financial transaction between an individual and a governmental body), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

You claim some of the remaining information is excepted from disclosure under section 552.102(a) of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). In this instance, the birth date at issue is the requestor's client's birth date. Because section 552.102(a) protects personal privacy, the requestor has a special right of access to her client's birth date. *See* Gov't Code § 552.023(a)(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 person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department may not withhold any portion of the remaining information under section 552.102.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license, title, or registration issued by an agency of this state or another state or country.³ Gov't Code § 552.130(a)(1)-(2).

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the CR-3 accident report forms we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked 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 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



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 467481

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); ORD 481. If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.