



February 25, 2002

Ms. Denise G. Obinegbo
Open Records Specialist
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2002-0880

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159407.

The City of Richardson Police Department (the "department") received a request for information concerning a specific criminal investigation. You indicate that you have released some of the requested information. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that you have not complied with section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Although you state that you included a copy of the request for information as Exhibit A, this office did not receive an Exhibit A or a copy of the request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd.*

of Ins., 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.103 of the Government Code is a discretionary exception and cannot provide a compelling reason for overcoming the presumption of openness. *See* Open Records Decision No. 473 (1987) (city's failure to meet 10-day deadline waived protections of section 552.103 and 552.111).

On the other hand, in Open Records Decision No. 586 (1991), this office found that the need of another governmental body to withhold information under section 552.108 can provide a compelling reason for overcoming the presumption of openness. Open Records Decision No. 586 (1991). Specifically, we found that information could be withheld under the predecessor to section 552.108 even though the governmental body holding the information had missed its deadline for requesting a decision because another governmental body asserted that the information related to its ongoing investigation and therefore it had an interest in withholding the information. *Id.* at 3. You contend that the criminal cases at issue "have been filed with the Dallas County District Attorney's Office and are currently awaiting a final disposition." However, you do not indicate that the Dallas District Attorney's Office has requested that the information at issue be withheld from disclosure. Therefore, you have not demonstrated a compelling reason to withhold the information under section 552.108.

Nevertheless, we note that the submitted documents contain criminal history record information ("CHRI") that must be withheld under section 552.101 of the Government Code.¹ CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") 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 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990).

¹Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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. We find that a portion of the submitted information consists of CHRI generated by TCIC and NCIC. Accordingly, this information, which we have marked, is excepted from required public disclosure by section 552.101 of the Government Code.

We further note that the submitted documents contain information that is confidential under constitutional privacy. Constitutional privacy protects two kinds of interests. *See* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See* Open Records Decision No. 455 at 3-7 (1987); *see also Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See* Open Records Decision No. 455 at 6-7 (1987); *see also Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985), *reh'g denied*, 770 F.2d 1081 (1985), cert. denied, 474 U.S. 1062 (1986). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." Open Records Decision No. 455 at 8 (1987) (quoting *Ramie*, 765 F.2d at 492). We have marked prisoner visitor information that is protected by constitutional privacy and must be withheld under section 552.101. *See* Open Records Decision No. 430 (1985) (list of inmate's visitors protected by constitutional law); *cf.* Open Records Decision No. 428 (1985) (list of inmate's correspondents protected by constitutional privacy).

The submitted documents contain social security numbers that may be excepted from disclosure under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. However, even if the social security numbers were obtained pursuant to a provision of law enacted on or after October 1, 1990, the requestor has a special right of access to his social security number. *See* Gov't Code § 552.023.

The submitted information also contains driver's license numbers that may be protected under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state

The submitted information contains several driver's license numbers; however, it is unclear whether all of these numbers relate to a driver's license issued by an agency of the State of Texas. To the extent the driver's license numbers contained in the submitted information were issued by an agency of this state, you must withhold the numbers under section 552.130. We note that the requestor has a right of access to his own driver's license number. See Gov't Code § 552.023.²

In summary, the department must withhold the marked CHRI under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and the Code of Federal Regulations. The department must withhold the marked prisoner visitor information under section 552.101 and constitutional privacy. The department must likewise withhold the social security numbers contained in the submitted information, except the requestor's own social security number, to the extent the numbers were obtained or are maintained by the department pursuant to a provision of law enacted on or after October 1, 1990. Finally, the department must withhold all of the Texas driver's license numbers, except for the requestor's, under section 552.130 of the Government Code. The department must release the remainder of the submitted information, including any information the department previously blacked out that is not otherwise excepted as noted above.

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

²Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

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).

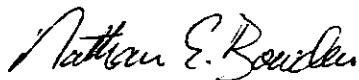
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 159407

Enc: Submitted documents

c: Mr. Raymond C. Current
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(w/o enclosures)