



November 10, 1999

Ms. Michelle M. Michaelsen  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
Municipal Building  
Dallas, Texas 75201

OR99-3204

Dear Ms. Michaelsen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128757.

You inform us that the City of Dallas Police Department (the “department”) received a request for “the arrest report which the [department] may have in connection with the arrest of Edward Anthony Louillard.” You claim that the requested information is excepted from public disclosure under section 552.103 of the Government Code. You have provided the information at issue for our review.

Pursuant to section 552.301(b), a governmental body is required to submit to this office (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, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.<sup>1</sup> You did not, however, submit to this office a copy of the written request for information.

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<sup>1</sup>The Seventy-sixth amended sections 552.301- 552.303 of the Government Code. Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 20, 1999 Tex. Sess. Law Serv. 4500 (Vernon). The amendment applies to a governmental body’s request for an attorney general decision made on or after September 1, 1999, the effective date of the amendment. Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 36, 1999 Tex. Sess. Law Serv. 4500, 4514 (Vernon).

Pursuant to section 552.303(c) of the Government Code, this office notified you by letter dated September 9, 1999, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue is public information.

You did not provide our office with the information that was requested. Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest 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).

Where information is made confidential by other law or where third party interests are at issue a compelling reason exists to overcome the presumption that information is open under section 552.303(e). *See* Open Records Decision No. 150 (1977). The submitted information contains information made confidential by law.

First, you must withhold information under section 552.130 of the Government Code. Section 552.130 excepts information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. We have marked the license plate numbers that you must withhold under section 552.130.

Second, the submitted information includes criminal history record information ("CHRI"). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information 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). 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. Please note, however, that driving record information is not confidential under chapter 411, *see* Gov't Code § 411.082(2)(B), and must be disclosed. We have marked information excepted from required public disclosure by section 552.101 of the Government Code. You must release the remaining requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/ljp

Ref: ID# 128757

Encl. Marked documents

cc: Ms. Kathy Gutierrez  
109 N. Prairie Ave.  
Dallas, Texas 75226  
(w/o enclosures)