



December 21, 1999

Mr. Duncan R. Fox
Assistant Chief, Legal Services
Texas Department of Public Safety
5805 N. Lamar Boulevard
Box 4087
Austin, Texas 78773-0001

OR99-3691

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131825.

The Department of Public Safety (the "department") received a request for correspondence between the governor's office and the department on a variety of subjects. You seek to withhold, under section 552.101 of the Government Code, criminal history information included in records responsive to the part of the request seeking "[c]orrespondence regarding the criminal history checks performed on individuals nominated by the Governor to fill positions on the State Boards and Commissions in his office." You have submitted representative samples of the information at issue.¹ We understand that you have released or will release the remaining information responsive to the request.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute.

¹In reaching our conclusion, we 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 No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

Section 411.083 of the Government Code makes confidential criminal history record information (“CHRI”) maintained by the department except that the department may disseminate such records as provided in chapter 411, subchapter F of the Government Code. None of the provisions authorizing disclosure of CHRI appear to apply to the instant request. Therefore, the department must withhold CHRI in the requested records pursuant to section 411.083. Please note, however, that certain driving record information is not confidential under chapter 411, but must be disclosed only in accordance with the provisions of chapter 521, Subchapter C of the Transportation Code. *See* Gov’t Code § 411.082(2)(B).

We note, too, that the submitted information contains driver’s license numbers. Section 552.130 of the Government Code excepts from disclosure, *inter alia*, information relating to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state” unless its release is authorized by chapter 730 of the Transportation Code.

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 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).

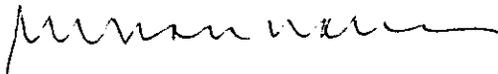
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 131825

Encl. Submitted documents

cc: Mr. Mike Lavigne
PMB 353
8127 Mesa Drive, B-206
Austin, Texas 78759-8632
(w/o enclosures)