



January 4, 2001

Ms. Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
209 West 14th Street, Suite 500
Austin, Texas 78701

OR2001-0026

Dear Ms. McElroy:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142881.

The Texas Board of Pardons and Paroles (the “board”) received a request for information relating to the board’s denial of the requestor’s application for a pardon. You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted. We also received and have considered the comments which the requestor submitted to this office.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 protects information that is made confidential by other statutes. You claim that the submitted information contains criminal history information that is confidential under section 552.101. Criminal history record information (“CHRI”) obtained from the National Crime Information Center (the “NCIC”) or the Texas Crime Information Center (the “TCIC”) is confidential under federal and state law. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given”), (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 of the Government Code provides that any CHRI maintained by the Texas Department of Public Safety (the “DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute also is confidential and may be disclosed only in

very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). We have marked the criminal history record information that the board must withhold from the requestor under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 also excepts from disclosure information that is encompassed by the common law right of privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a governmental body compiles or summarizes criminal history information pertaining to a particular individual, the compiled or summarized information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). The submitted information contains criminal history information that ordinarily would be confidential under section 552.101 in conjunction with common law privacy. In this instance, however, the information in question pertains to the requestor. Accordingly, the requestor has a special right of access to that information under section 552.023 of the Government Code, and the board must release it to him. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 5 (1987) (stating that where an individual asks a governmental body to release information concerning only that individual, no common law privacy interest arises, and the individual is entitled to that information if the governmental body can claim no other basis for denying access to it).

A social security number also may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 at 2-4 (1994). In this instance, however, the requestor also has a special right of access to his own social security number under section 552.023.

Lastly, we also note that the submitted information contains a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure, among other information, "a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130(a)(1). Ordinarily, a Texas driver's license number must be withheld from disclosure in accordance with section 552.130. In this instance, however, the requestor has a special right of access to his own driver's license number under section 552.023.

In summary, a portion of the submitted information constitutes criminal history record information that is confidential under section 552.101 of the Government Code in

conjunction with federal and state law. The board must withhold that information from the requestor. The rest of the submitted information is not excepted from disclosure and must be released.¹

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).

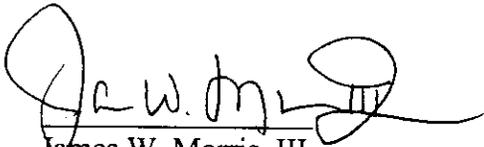
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

¹Please note, however, that if the board receives another request for any of the submitted information to which the requestor has a special right of access, and the person who requests that information does not have a special right of access to it under section 552.023 of the Government Code, the board should resubmit the information to this office and request another ruling.

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 General Services 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. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 142881

Encl: Submitted documents

cc: Rev. Lloyd E. Humphreys
Parclete Ministries
25 Highland Park Village 100-257
Dallas, Texas 75205
(w/o enclosures)