



January 24, 2001

Mr. Bruce P. Sadler  
Assistant District Attorney  
47<sup>th</sup> Judicial District of Texas  
Potter County Courts Building  
501 Filmore, Suite 1A  
Amarillo, Texas 79101-2449

OR2001-0271

Dear Mr. Sadler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143560.

The Potter County District Attorney's Office (the "office") received a request for seven categories of information from the district attorney's file on a specific individual in regard to a specific motor vehicle accident. You state that you have released some of the requested information. However, you claim that a portion of the information submitted as Exhibit D and all of the information submitted as Exhibits G and H is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin with the information submitted as Exhibit G for which you claim section 552.108. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a), (b), .301(e); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the police report contained in Exhibit G pertains to a pending criminal matter. Based on this representation, we find that release of the submitted report would interfere with an ongoing criminal case, and therefore, the submitted report is subject to section 552.108(a)(1).

However, information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd*

*n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, the office must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the submitted report. Although section 552.108(a)(1) authorizes the office to withhold the remaining information from disclosure, you may choose to release all or part of the report that is not otherwise confidential by law. *See* Gov't Code § 552.007.<sup>1</sup>

Next, we address the criminal history information submitted as Exhibit H. Section 552.101 of the Government Code excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions regarding criminal history information. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential by statute. 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 Texas Department of Public Safety ("DPS") maintains, except that 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). Most of the information in Exhibit H consists of confidential CHRI the release of which is governed by chapter 411. However, the first page in Exhibit H consists of driving record information and is therefore not confidential under chapter 411. Accordingly, the office must release the first page in Exhibit H but must withhold the remainder of Exhibit H.

Finally, we turn to the motor vehicle information contained in Exhibit D. Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, under section 552.130, the

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<sup>1</sup>It appears that the office has already released the front page information under section 552.108(c).

office must withhold the Texas driver's license number that you redacted from the "Prosecution Submission." The other driver's license number that you redacted from the Prosecution Submission is not a Texas driver's license number and is therefore not excepted under section 552.130.

The disclosure of the driver's license number that appears in the peace officer's accident report is governed by law that is outside of the Public Information Act. *See* V.T.C.S. art. 6701d, § 47(b)(1). *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413.<sup>2</sup> Under this provision, a law enforcement agency employing a peace officer who made an accident report "is required to release" a copy of the accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has provided the office with the date of the accident, the specific location, and the names of persons involved in the accident. Thus, the office is required to release the accident report in its entirety under section 47(b)(1) of article 6701d, V.T.C.S. Consequently, the office must release the driver's license number that appears in the accident report contained in Exhibit D.

In conclusion, the office may withhold the police report contained in Exhibit G under section 552.108(a)(1). The office must withhold the information contained in Exhibit H under section 552.101 in conjunction with chapter 411, except for the first page in Exhibit H which must be released. As to the indicated driver's license numbers contained in Exhibit D, under section 552.130, the office must withhold the number in the Prosecution Submission that is a Texas driver's license. The office must release the non-Texas driver's license number contained in the Prosecution Submission. Finally, the office must release the peace officer's accident report in its entirety, including the driver's license number contained in the report, under section 47(b)(1) of article 6701d, V.T.C.S.

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).

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<sup>2</sup>We note that the text of amended section 47 of article 6701d is not found in Vernon's Revised Civil Statutes or in the Transportation Code. However, section 47 of article 6701d is published in the 1995 General and Special Laws of the 1995 Legislature at chapter 894, section 1.

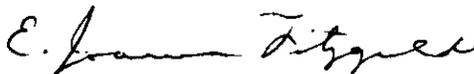
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/er

Ref: ID# 143560

Encl: Submitted documents

cc: Ms. Carmen (C.D.) Whitworth  
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