



May 17, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-001

OR2001-2047

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148819.

The Department of Public Safety (the “department”) received a request for information related to an automobile accident that occurred on February 9, 2001. You state that you will release a redacted copy of the information to the requestor. You assert that the redacted information is excepted from public disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted documents.

We first address your arguments concerning the confidentiality of the social security numbers in the submitted documents. You state that the “witnesses provided their social security numbers voluntarily, so this is not an instance in which disclosure of the social security number is prohibited by statute.” Thus, the social security numbers are not protected by section 405(c)(2)(C)(viii) of Title 42 of the United States Code, which makes confidential social security numbers obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. You assert that the social security numbers are confidential under common law privacy in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception applies to information made confidential by the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common law right to privacy if the information

contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Id.* This office has concluded that social security numbers are not protected by the common law right of privacy. *See* Open Records Decision No. 622 (1994). Thus, you must release the social security numbers.

Criminal history record information ("CHRI") is excepted from public disclosure under section 552.101. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *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."), (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 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed 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). Therefore, the department must withhold the CHRI highlighted in yellow in the submitted documents under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

In addition, the submitted documents contain information that is excepted from required public disclosure 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; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license numbers, vehicle identification numbers and license plate numbers highlighted in yellow in the submitted documents under section 552.130. You must also withhold the entire copies of the drivers' licenses under section 552.130.

Further, you request that this office issue a previous determination allowing the department to withhold information related to a driver's license or permit, motor vehicle title or registration, and personal identification card issued by an agency of this state under section 552.130 of the Government Code. Therefore, as per your request, this letter ruling

shall serve as a previous determination under section 552.301(a) that the following are excepted from public disclosure under section 552.130: (1) a Texas driver's license number; (2) a Texas license plate number; (3) a Texas vehicle identification number; and (4) an entire copy of a Texas driver's license. *See* Gov't Code §552.301(a), (f); *see also* Open Records Decision No. 673 (2001). However, we note that section 552.130 protects the privacy of the individual to whom the information relates. Therefore, a person's section 552.130 information must be released to her or her authorized representative. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to information that is protected by laws intended to protect person's privacy).

This previous determination applies only to the following types of information requested of the Department of Public Safety: (1) a Texas driver's license number; (2) a Texas license plate number; (3) a Texas vehicle identification number; and (4) an entire copy of a Texas driver's license. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the Department of Public Safety need not ask for a decision from this office again with respect to these types of information requested of the Department of Public Safety. *See id.*

Finally, you also request that this office issue a previous determination related to criminal history record information maintained by the department. Therefore, as per your request, this letter ruling shall serve as a previous determination under section 552.301(a) that criminal history record information ("CHRI"), as defined in section 411.082 of the Government Code and as maintained by the Department of Public Safety under section 411.083 of the Government Code, is excepted from disclosure in conjunction with section 552.101 of the Government Code. However, we note that the department must grant access to CHRI to the person who is the subject of the CHRI. Gov't Code § 411.083(b)(3).

This previous determination applies only to the following type of information requested of the Department of Public Safety: criminal history report information ("CHRI"), as defined in section 411.082 of the Government Code and as maintained by the Department of Public Safety under section 411.083 of the Government Code. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the Department of Public Safety need not ask for a decision from this office again with respect to this type of information requested of the Department of Public Safety. *See id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. 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

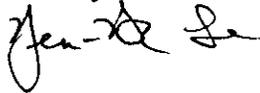
copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor 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 of 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/dkb/seg

Ref: ID# 148819

Encl. Submitted documents

cc: Ms. Teresa Teague, RN
Bristol-Myers Squibb/Oncology
1112 FM 1708
Weatherford, Texas 76087
(w/o enclosures)