



June 22, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-2666

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# 148682.

The Texas Department of Public Safety (the "department") received a request for all records relating to a specified department trooper, including all "disciplines, reprimands, and internal affairs investigations." You state that you will release most of the responsive information. You have, however, submitted information which you claim is responsive to the request and which 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 have reviewed the submitted representative sample documents.¹

You claim that Exhibit B contains criminal history record information ("CHRI") that is excepted from disclosure pursuant to section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by statute. Federal regulations prohibit

¹ 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 Nos. 499 (1988), 497 (1988). 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.

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 of the Government Code provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. *See* 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. *See 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). The definition of CHRI does not include driving history record information maintained by the department under Subchapter C of Chapter 521 of the Transportation Code. After reviewing the submitted information in Exhibit B, we conclude that some of the information is CHRI. We have marked the information that you must withhold pursuant to section 411.083 of the Government Code.

You claim that Exhibit B contains information that is excepted from disclosure pursuant to section 552.101 in conjunction with sections 521.045 and 521.046 of the Transportation Code. Sections 521.045 and 521.046 authorize the department to disclose to a requestor upon payment of applicable fees information relating to an individual’s date of birth, current license status, most recent address, and motor vehicle moving violations and accidents that resulted in traffic law convictions or in which the individual received a citation. *See* Transp. Code §§ 521.045, .046. However, in order for a requestor to receive such information, the requestor must be eligible to receive the information under Chapter 730 of the Transportation Code and must submit to the department the individual’s driver’s license number or the individual’s full name and date of birth. *See id.* After reviewing the submitted information in Exhibit B, we do not believe that you have sufficiently demonstrated that any of the information is subject to sections 521.045 and 521.046 of the Transportation Code. You have not explained, and the information does not show, whether the moving violations or accidents resulted in a conviction or whether a citation was issued. Therefore, we cannot conclude that the driving record information in Exhibit B is excepted from disclosure pursuant to section 552.101 in conjunction with sections 521.045 and 521.046 of the Transportation Code. Thus, it must be released to the requestor.

Next, we consider your claim that Exhibits A, B, and C contain information excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure 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. After reviewing the highlighted information in Exhibit A, we cannot determine whether it is motor vehicle information that relates to a license, permit, title, or registration issued by an agency of the state of Texas. If the motor vehicle information in Exhibit A relates to a license, permit, title, or registration issued by an agency of the state of Texas, you must withhold it pursuant to section 552.130. If not, you must release it to the requestor. We

have marked a driver's license number in Exhibit B that you must withhold under section 552.130, if it has been issued by Texas. Otherwise, you must release it to the requestor. We conclude that you must withhold Exhibit C pursuant to section 552.130. Because we base our ruling regarding Exhibit C on section 552.130, we need not address your section 552.108 claim.

You claim that the submitted information in Exhibit D contains personal financial information that is excepted from disclosure pursuant to section 552.101 in conjunction with the common law right of privacy. Section 552.101 also encompasses the common law right to privacy. Information is protected by the common law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); *see also* Open Records Decision No. 611 at 1 (1992). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage which is offered by his employer is a personal investment decision and information about it is excepted from disclosure under the common law right of privacy. *See* Open Records Decision Nos. 600 (1992) (finding federal tax Form W-4 Employee's Withholding Allowance Certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care related to personal financial decisions). In addition, information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common law right to privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* Open Records Decision No. 600 at 10 (1992). After examining Exhibit D, it is not apparent whether all of the trooper's deductions are mandatory or voluntary. Therefore, we would caution you to evaluate the data carefully before releasing it. *See* Gov't Code § 552.352. We have marked the personal financial information in Exhibit D that the department must withhold pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy. In addition, the department must withhold information showing the trooper's allocation of his salary to any optional insurance coverage. The department must release the remainder of Exhibit D to the requestor.

In summary, you must withhold the CHRI that we have marked pursuant to section 552.101 of the Government Code. You must withhold the highlighted information in Exhibit A pursuant to section 552.130 of the Government Code to the extent that it relates to a license, permit, title, or registration issued by an agency of the state of Texas. Otherwise, you must

release the highlighted information in Exhibit A to the requestor. You must withhold the marked driver's license number in Exhibit B pursuant to section 552.130, if it has been issued by Texas. You must withhold Exhibit C pursuant to section 552.130. You must withhold the marked personal financial information in Exhibit D and information reflecting participation in optional insurance coverage pursuant to section 552.101 in conjunction with the common law right of privacy. You must release all other submitted information to the requestor.

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).

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 'Yen-Ha Le', written in a cursive style.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RJB/seg

Ref: ID# 148682

Encl. Marked documents

cc: Ms. Nanci Wilson
KVUE News
3201 Steck Avenue
Austin, Texas 78701
(w/o enclosures)