



June 18, 2002

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2002-3281

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164470.

The City of Mesquite Police Department (the “department”) received a request for a call sheet from a specific incident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. 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 Department of Public Safety (“DPS”) maintains, except that the 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. CHRI is defined under section 411.082 of the Government Code as

information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. The term does not include:

(A) identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or

(B) driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.

Gov't Code § 411.082(2). 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. To the extent any of the information you have marked under section 552.101 constitutes CHRI obtained from the federal government, another state, DPS, or another criminal justice agency, the department must withhold the information under section 552.101 of the Government Code in conjunction with federal regulations and chapter 411, subchapter F of the Government Code.

To the extent that the information you have marked under section 552.101 does not constitute CHRI obtained from the federal government, another state, DPS, or another criminal justice agency, we address your apparent contention that some of the information is excepted under section 552.101 and common-law privacy. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Thus, to the extent the information you seek to withhold under section 552.101 identifies an individual as a possible criminal suspect, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

You also contend that some of the submitted information is excepted from 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 have marked information on the submitted call sheet that you contend consists of "information received from the Texas Department of Public Safety relating to the titles of vehicles." We agree that the information you have marked under section 552.130 of the Government Code relates to motor vehicle titles or registrations issued by an agency of this state, and therefore most of the information must be withheld under section 552.130. We have also marked information in the material that you seek to withhold under section 552.101 that must be withheld under section 552.130 if it is not otherwise excepted under section 552.101. We note, however, that section 552.130 is designed to protect the privacy interests of individuals. Therefore, the requestor has a special right of access to her own vehicle title and registration information. *See* Gov't Code § 552.023. We have marked the information that must be withheld under section 552.130.

In summary, the department must withhold the information you have marked under section 552.101 if the information is CHRI obtained from the federal government, another state, the Texas Department of Public Safety, or another criminal justice agency. Even if the information you have marked was not obtained from the federal government, another state, the Texas Department of Public Safety, or another criminal justice agency, the department must withhold any portion of the information that may identify an individual as a criminal suspect. Finally, the department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remainder of the submitted information.

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).

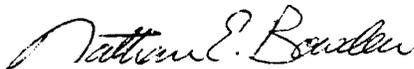
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 164470

Enc: Submitted documents

c: Ms. Melissa Shaw
P.O. Box 1721
Forney, Texas 75126
(w/o enclosures)