



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

February 27, 2003

Ms. Donna L. Clarke  
Assistant District Attorney  
County of Lubbock  
P.O. Box 10536  
Lubbock, Texas 79408-3536

OR2003-1278

Dear Ms. Clarke:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177110.

The Lubbock County Sheriff's Office (the "sheriff") received a request for "[a]ny and all records, reports of investigation, complaints or witness information, calls for service, cooperating individual reports, payments for information, witness information, accident reports, and etc." relating to a named individual. You claim that portions of the requested information are 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.

Initially, we note that the requestor seeks "[a]ny and all" information concerning a named individual. Pursuant to *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), where an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. Thus, when a requestor asks for unspecified information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.* Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses the common-law right to privacy. In this case, the requestor asks for all information relating to a certain person. Thus, we believe that the

named individual's right to privacy has been implicated. Accordingly, to the extent that the sheriff maintains information that depicts the named individual as a possible suspect, defendant, or arrestee, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

Section 552.101 also protects information made confidential by statute. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center 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. 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. Thus, assuming that the sheriff has CHRI about the named individual in its possession and it falls within the ambit of these state and federal regulations, the sheriff must withhold it from the requestor.

You next argue that the submitted materials include fingerprint information subject to sections 559.001, 559.002, and 559.003 of the Government Code, which provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

**Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER.** A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

**Sec. 559.003. APPLICATION OF CHAPTER 552.** A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

It does not appear to this office that section 559.002 permits the disclosure of the submitted fingerprint information. Therefore, the sheriff must withhold the fingerprints in the submitted documents, which we have marked, under section 552.101 in conjunction with section 559.003 of the Government Code.

In summary, the department must withhold the submitted information under section 552.101 in conjunction with common-law privacy to the extent that the individual named in the request is depicted as a possible suspect, defendant, or arrestee. Assuming that the sheriff has CHRI about the named individual in its possession and it falls within the ambit of the listed state and federal regulations, this information must be withheld from the requestor under section 552.101 in conjunction with chapter 411 of the Government Code. Fingerprints must be withheld under section 552.101 in conjunction with section 559.003 of the Government Code. Based on our ruling, we need not address your argument under section 552.130. The remaining information must be released 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).

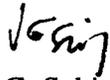
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 177110

Enc: Submitted documents

c: Mr. Richard Arnold  
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(w/o enclosures)