



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 7, 2003

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

OR2003-5519

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# 185524.

The Texas Department of Public Safety ("DPS") received a request for information related to a specified traffic stop and search involving two named individuals, including "written reports, copies of radio conversations . . . , and the video and audio tape of the traffic stop recorded by [a named Trooper's] camera in his DPS vehicle. Conversations should include any discussion of [the named individuals'] alleged criminal histories . . . ." You state that DPS will provide the requestor a copy of the requested videotape that has been edited to remove recognizable images of peace officers in accordance with the previous determination issued to DPS in Open Records Letter No. 2001-2029 (2001). *See* Open Records Decision No. 673 (2001) (requirements of previous determination). You also state that you will release a copy of DPS's radio logs for this traffic stop that have been edited to remove any references to the alleged criminal histories of the two named individuals in accordance with the previous determination issued to DPS in Open Records Letter No. 2001-2047 (2001). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301). You claim that the remaining digital recording of radio traffic and portions of the submitted videotape are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Criminal history record information (“CHRI”) is confidential and not subject to disclosure. 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 of the Government Code provides that any CHRI maintained by DPS is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from 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, to the extent the submitted digital audio recording and videotape reveal CHRI about an individual, you must withhold the CHRI from the requestor.<sup>1</sup>

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

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<sup>1</sup>We note that if DPS is unable to redact potentially confidential information from the digital audio recording, then DPS may withhold the entire digital audio recording.

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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 185524

Enc. Submitted documents

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(w/o enclosures)