



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2004

Ms. M. Ann Montgomery  
Assistant County & District Attorney  
Ellis County & District Attorney's Office  
1201 N. Hwy 77, Suite B  
Waxahachie, Texas 75165-5140

OR2004-4160

Dear Ms. Montgomery:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201894.

The Ellis County and District Attorney's Office (the "office") received a request for information pertaining to a specified case. You state, and provide documentation showing, that the office provided the requestor with some of the requested information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.<sup>1</sup> We note, however, that subchapter G of chapter 143, which includes section 143.1214, generally applies only to municipalities with a population of 1.5 million or more. *See* Local Gov't Code § 143.101(a). Accordingly, we conclude that the office may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.

Next, we note that criminal history record information ("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

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See 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. *See 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). Accordingly, to the extent that the requested records contain such information, the office must withhold that information pursuant to section 552.101 of the Government Code.

You also claim that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a), in part, excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Section 552.108(b) provides in pertinent part that "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't 552.108(b)(1). Generally, a governmental body claiming section 552.108 as an applicable exception to disclosure must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the submitted information pertains to a pending criminal investigation. Thus, based on your representations and our review of the information at issue, we find that the release of most of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we find that section 552.108(a)(1) is applicable to most of the information at issue.

However, we note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*.

*See* 531 S.W.2d at 185; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, we conclude that with the exception of basic information that must be released to the requestor, the office may generally withhold, under section 552.108(a)(1) of the Government Code, the remaining submitted information that it seeks to withhold under this exception to disclosure. We note, however, that the office maintains the discretion to release all or part of this information that is not otherwise confidential by law.<sup>2</sup> *See* Gov't Code § 552.007.

However, we note that it appears that the office has previously voluntarily released to the requestor some of the submitted information that it now seeks to withhold under section 552.108 of the Government Code. The office may not now withhold such information under either section 552.103 or section 552.108 of the Government Code. *See* Gov't Code §552.007 (prohibiting selective disclosure of information); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 490 (1988), 463 (1987) (if governmental body voluntarily releases information to one member of public, Public Information Act's (the "Act") exceptions to disclosure are waived, unless information is deemed confidential), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Consequently, the office must release to the requestor the portions of the submitted information that we have marked for release.

In summary, to the extent that the requested records contain CHRI information, the office must withhold that information pursuant to section 552.101 of the Government Code. With the exception of basic information that must be released to the requestor, the office may generally withhold, under section 552.108(a)(1) of the Government Code, the remaining submitted information that it seeks to withhold under this exception to disclosure. However, the office must release to the requestor the portions of the submitted information that we have marked for release. The office must also release the remaining portions of the submitted information that have not previously been 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

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<sup>2</sup> Because we base our ruling regarding this particular information on section 552.108(a)(1) of the Government Code, we need not address your remaining claim with regard to this information, except to note that "basic information" may not generally be withheld under section 552.103 of the Government Code. *See* Open Records Decision Nos. 597 (1991), 362 (1983).

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 201894

Enc. Marked documents

c: Mr. James R. Jenkins  
P.O. Box 2836  
Waxahachie, Texas 75168  
(w/o enclosures)