

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2004

Mr. Jeff Lopez
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2004-6393

Dear Mr. Lopez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205970.

The Texas Department of Public Safety (the "department") received two requests for information concerning a certain traffic accident. You state that the department will release the peace officer's accident report to both requestors. You also state that the department will release to the second requestor certain requested information concerning the trucking company. You claim that the remaining requested information is excepted from disclosure under section 552.108(a)(1) of the Government Code because you state that a criminally negligent homicide charge is pending against one of the drivers. We have considered the exception you claim and reviewed the submitted information.

We begin with a procedural matter. You state that the department received the first request on May 7, 2004. However, you did not seek an open records ruling on your claimed exception to disclosure until May 26, 2004. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely submitted, the remaining requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the remaining requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977)

(presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

Ordinarily, the applicability of section 552.108 to the requested information is not a compelling reason to withhold requested information. *See* Open Records Decision No. 586 (1992). You inform us that the department informed the first requestor that the department had no responsive records and that it was not until the department received the second request that the officer who investigated the accident was identified. You state that the department received the second request on May 12, 2004, 7 business days before the ten-day deadline for the first request. Thus, we understand that initially the department mistakenly responded to the first requestor by representing that the department maintained no responsive information when, in fact, it did maintain responsive records, which it was able to locate upon identifying the investigating officer.¹

The Act does not excuse a governmental body's failure to comply with its deadlines when the failure is the result of an honest mistake. The Act's presumption of openness is overcome only if the governmental body shows a compelling reason to withhold the information. *See* Gov't Code § 552.302. The department's section 552.108 claim is not such a compelling reason in this instance. Consequently, the department may not withhold the information based on section 552.108.

The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). 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); *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."). 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 maintains, except that the department may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Under state law, the definition of CHRI does not include driving record information maintained by the department under chapter 521 of the Transportation Code. *See id.* § 411.082(2)(B). The department must withhold any CHRI

¹A governmental body must make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

falling within the ambit of these regulations pursuant to section 552.101 of the Government Code.

The submitted documents include private information. Section 552.101 also excepts from required public disclosure information that is confidential under the common law right to privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined that personal financial information that does not relate to a financial transaction between an individual and a governmental body is highly intimate and embarrassing and of no legitimate public concern. See Open Records Decision Nos. 600 (1992), 545 (1990). We have marked the private information. The department must withhold this information from disclosure based on section 552.101.

The information also includes information that is subject to section 552.130. 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[.]

We have marked the information the department must withhold from disclosure under section 552.130.

In summary, with the exception of the marked information we have determined to be excepted from disclosure under sections 552.101 and 552.130, the department must release the information at issue to both requestors.

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).

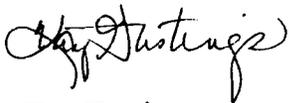
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 205970

Enc: Submitted documents

c: Ms. Noe M. Saucedo
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(w/o enclosures)

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Progressive County Mutual Insurance
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CAUSE NO. GV402841

TEXAS DEPARTMENT OF PUBLIC SAFETY,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS,	§	
Defendant.	§	53 RD JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff Texas Department of Public Safety, and Defendant, Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), TEX. GOV'T CODE CH. 552. The parties represent to the Court that, in compliance with TEX. GOV'T CODE § 552.325(c), the requestors, Angela Rose and Noe Saucedo were sent reasonable notice of this setting and of the parties' agreement that Texas Department of Public Safety may withhold the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestors, Angela Rose and Noe Saucedo, have not informed the parties of their intention to intervene. Neither have the requestors filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

FILED

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

04 DEC -3 PM 2: 04

Marlene Rodriguez Mendez

DISTRICT CLERK
TRAVIS COUNTY, TEXAS

1. The information at issue, specifically a completed vehicle accident investigation report that is the subject of a criminal prosecution by the Caldwell County District Attorney's Office, is excepted from disclosure by TEX. GOV'T CODE §552.108(a)(1).

2. The Texas Department of Public Safety may withhold the information at issue from the requestor.

3. All costs of court are taxed against the parties incurring the same;

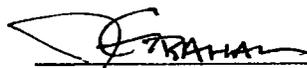
4. All relief not expressly granted is denied; and

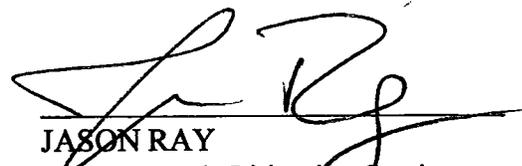
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 3rd day of December, 2004.


PRESIDING JUDGE

APPROVED:


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