



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2004

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2004-7119

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207565.

The Garland Police Department (the "department") received a request for information pertaining to a specified accident. You state that some information has been released but claim that portions of the submitted information are excepted from disclosure under sections 552.026, 552.101, 552.108, 552.114, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses laws that make criminal history record information ("CHRI") confidential. CHRI "means 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." Gov't Code § 411.082(2). CHRI obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law.

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 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the 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). However, the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2)(B). The department must withhold any CHRI falling within the ambit of these state and federal regulations pursuant to section 552.101.

You assert that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 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 “[t]he investigation of this case is currently ongoing and charges have been filed by the Dallas County District Attorney’s Office.” Based upon your representations, we conclude that the department may withhold the information you have marked under section 552.108(a)(1).¹ *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).

You assert that the green-marked portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver’s license and information relating to a Texas motor vehicle title or registration. Gov’t Code § 552.130. We note, however, that section 552.130 is designed to protect individuals’ privacy and that the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, *writ ref’d n.r.e.*); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Accordingly, the department must withhold Texas driver’s license and motor vehicle record information that pertains to

¹As we are able to make this determination, we do not address your arguments under sections 552.026 and 552.114 of the Government Code.

persons who are living and vehicles in which living individuals have an interest under section 552.130. Texas driver's license information and information from motor vehicle records that were issued to persons who are now deceased may not be withheld under section 552.130.

Finally, you assert that some of the remaining submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, to the extent that the submitted documents contain CHRI that is confidential under federal law or subchapter F of chapter 411 of the Government Code, the department must withhold any such information under section 552.101. The department may withhold the information you have marked under section 552.108(a)(1). The department must withhold Texas-issued driver's license and motor vehicle record information that pertains to living individuals or automobiles in which living individuals have an interest under section 552.130. The remaining submitted information must be released to the requestor in compliance with applicable copyright law.

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,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 207565

Enc. Submitted documents

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