



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2004

Ms. Lillian Guillen Graham
Assistant City Attorney
Office of the City Attorney
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2004-8138

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209690.

The Mesquite Police Department (the "department") received a request for a specified incident report. You state that you have provided the requestor with some of the requested information. You claim, however, that the remaining requested information is 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.

You contend that the submitted documents include criminal history record information ("CHRI") that is confidential under section 552.101 in conjunction with section 411.083 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. 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. However, after careful review, we conclude

that the submitted information does not contain any CHRI; therefore, none of the submitted information may be withheld under section 552.101 in conjunction with section 411.083.

You also contend that some of the submitted information is excepted under section 552.130 of the Government Code. Section 552.130 provides in relevant part the following:

(a) Information is excepted from the requirements 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[.]

Gov't Code § 552.130(a). You must withhold the motor vehicle information that we have marked under section 552.130 of the Government Code.

In summary, you must withhold the information we have marked pursuant to section 552.130 of the Government Code. The remaining information must be released to the requestor.¹

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).

¹ We note that some of the information subject to release would generally be withheld from the public under laws and exceptions designed to protect the requestor's privacy. However, the requestor in this instance has a special right of access to information pertaining to him. Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if the department receives a further request for this information from an individual other than this requestor or his representative, the department should again seek our decision.

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 209690

Enc. Submitted documents

c: Mr. Shawn Daugherty
2709 Brushy Creek
Mesquite, Texas 75181
(w/o enclosures)