



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2004

Mr. Francisco J. Martinez
Assistant County Attorney
Cameron County District Attorney's Office
974 E. Harrison Street
Brownsville, Texas 78520

OR2004-8685

Dear Mr. Martinez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211142.

The Cameron County Park Police Rangers (the "rangers") received a request for "investigative work product" pertaining to a specified murder investigation. You claim that the 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 representative sample documents.¹

Initially, 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 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

¹ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. However, the definition of CHRI does not include driving history record information maintained by the DPS under subchapter C of chapter 521 of the Transportation Code. *See Gov't Code* § 411.082(2)(B). 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, we conclude that to the extent that the requested records contain CHRI, the rangers must withhold that information pursuant to section 552.101 of the Government Code.

You claim that the information that you submitted to us for review as Exhibit A is excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Gov't Code* § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977); *Open Records Decision No.434 at 2-3 (1986)*. You state that this information pertains to a criminal case that is still under investigation. Thus, we agree that section 552.108(a)(1) applies to this information.

We note, however, 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 Publishing Company 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). *See Open Records Decision No. 127 (1976)* (summarizing types of basic information that must be made available to public, to include detailed description of offense). Accordingly, we conclude that with the exception of basic information that must be released to the requestor, the rangers may withhold Exhibit A pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the rangers maintain the discretion to release all or part of this information that is not otherwise confidential by law.² *See Gov't Code* § 552.007.

² Because we base our ruling with regard to Exhibit A on section 552.108(a)(1) of the Government Code, we need not address your remaining claimed exception to disclosure for 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)*.

Finally, we note that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the rangers must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

In summary, to the extent that the requested records contain CHRI, the rangers must withhold that information pursuant to section 552.101 of the Government Code. Except for basic information that must be released to the requestor, the rangers may withhold Exhibit A pursuant to section 552.108(a)(1) of the Government Code. The rangers must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code. The rangers must release the remaining submitted information 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 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# 211142

Enc. Marked documents

c: Mr. David Robledo
Reporter
The Brownsville Herald
1135 E. Van Buren
Brownsville, Texas 78520
(w/o enclosures)