



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27 2004

Ms. Pamela Smith
Sr. Assistant General Counsel
Texas Department of Public Safety
Box 4087
Austin, Texas 78773-0001

OR2004-9142

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211715.

The Department of Public Safety (the "department") received a request for (1) documents that reflect a named individual's current criminal history, (2) documents that reflect the named individual's history over the past ten years, (3) documents that reflect changes made to the named individual's criminal history over the past ten years, (4) documents that reflect the full names and titles of all authorized requestors and operators conducting Computerized Criminal History inquiries regarding the named individual for the past ten years, (5) documents that reflect the full names and titles of all authorized requestors and operators who have input data regarding the named individual's history at any time over the past ten years, and (6) documents reflecting the input, deletion, or modification of data relating to a 1991 arrest and/or conviction for larceny and/or theft of cattle. You state that to the extent records responsive to items (1), (2), (3), (5), and (6) exist, the department is prepared to make those records available to the requestor in accordance with the department's rules pursuant to sections 411.083 and 411.086 of the Government. You claim that the information responsive to item (4) of the request is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments

¹We 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.

submitted by the requestor. *See* Gov't Code § 552.304 (providing that individual may submit comments stating why information should or should not be released).

Section 552.108(b)(1) excepts from required public disclosure “[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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” A governmental body that claims an exception to disclosure section 552.108 must reasonably explain how and why this section is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 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). This office has concluded that section 552.108(b)(1) protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.,* Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment).

You inform us that the submitted information consists of logs of criminal history checks on the Texas Crime Information Center (the “TCIC”) and National Crime Information Center (the “NCIC”) systems made via the Texas Law Enforcement Telecommunications System (“TLETS”), which provides local law enforcement agencies with access to TCIC/NCIC information. You explain that TLETS logs are not accessible to users of the system and are created and maintained by the department for purposes of monitoring use of the system and preventing unauthorized access to confidential law enforcement information. Thus, you contend that release of this information would interfere with law enforcement activities. Based on your arguments and the information you provided, we agree that the release of the requested information would interfere with law enforcement. We therefore conclude that the submitted information is excepted from disclosure under section 552.108(b)(1) of the Government Code and may be withheld on that basis.

Finally, you ask this office to issue a previous determination permitting the department to withhold inquiry information made via the TLETS system without the necessity of requesting an attorney general decision. We decline to issue such a previous determination at this time.

Accordingly, 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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/krl

Ref: ID# 211715

Enc. Submitted documents

c: Ms. Donna C. Peavler
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(w/o enclosures)