ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2005

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196

OR2005-07243

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 230141.

The Tarrant County District Attorney (the "district attorney") received a request for "[a]ll documents, notes, reports, investigations, photographs, statements, files, complaints, and indictments, relating to" three named individuals, "beginning January 1, 2001 through today." While you make no arguments for withholding the submitted information, you state that release of the submitted information may implicate the interests of the Federal Bureau of Investigation ("FBI"). You state that you notified the FBI of the district attorney's receipt of the request for information and of the FBI's right to submit arguments to this office as to why the requested information should not be released to the requestor. We have considered the arguments submitted by the FBI and reviewed the submitted information. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

The FBI states that some of the requested items, which were shared with the district attorney, "are FBI documents, computer printouts and cassette recordings generated in the course of a federal criminal investigation." Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the

confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561 we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that the federal Freedom of Information Act ("FOIA") applies only to federal agencies and does not apply to records held by state agencies. Open Records Decision No. 561 at 6. Further, we stated that information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded that: "when information in the possession of a federal agency is 'deemed confidential' by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law." *Id.* at 7.

The FBI states that the information at issue would be confidential under FOIA as law enforcement information concerning an individual, the release of which would be considered an unwarranted invasion of privacy. *See* 5 U.S.C. § 552(b)(6) and (7)(C). Therefore, we conclude that the information submitted to the district attorney by the FBI must be withheld under section 552.101.

We note that some of the remaining information is also confidential. Fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code, which provide:

> Sec. 560.001. DEFINITIONS. In this chapter
>
> > (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
> >
> > (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.
>
> Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:
>
> > (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001-.003. Thus, pursuant to section 552.101 and section 560.003, the district attorney must withhold the fingerprint information we have marked unless section 560.002 permits its disclosure.

We also note that the remaining information contains Texas motor vehicle record information. Section 552.130 of the Government Code 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." Gov't Code §552.130(a). Consequently, pursuant to section 552.130, you must withhold the Texas motor vehicle record information we have marked.

In summary, the information provided to the district attorney by the FBI must be withheld under section 552.101 of the Government Code in conjunction with federal law. The district attorney must withhold the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code. The Texas motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code. The remaining information must be released 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).

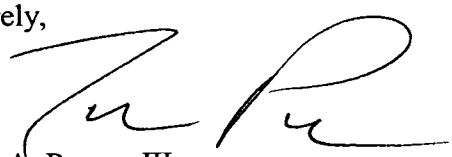
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 230141

Enc. Submitted documents

c: Mr. Lars L. Berg
Kelly, Hart & Hallman
201 Main Street, Suite 2500
Fort Worth, Texas 76102
(w/o enclosures)

Mr. Wilbur M. Gregory, Jr.
Chief Division Counsel
Dallas Regional Field Office
Federal Bureau of Investigation
J. Gordon Shanklin Building
One Justice Way
Dallas, Texas 75220
(w/o enclosures)