



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2005

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2005-08287

Dear Ms. Lytle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 231948.

The District Attorney's Office for the Thirty-Fourth Judicial District (the "district attorney") received a request for information pertaining to a particular cause number. You inform us that some information will be released but claim that other 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 state that the information in Exhibits D and E consists of grand jury records. This office has concluded that grand juries are part of the judiciary and are, thus, not subject to the Act. *See* Gov't Code § 552.003 ("governmental body" does not include judiciary). Records that are within the constructive possession of grand juries are not public information that is subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *See id.* Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *See id.* You inform us that the information in Exhibits D and E was obtained by the district attorney through the use of grand jury subpoenas at the direction of the grand jury. Thus, we understand that the district attorney is holding this information as an agent of the grand jury. Accordingly, we

conclude that the information in Exhibits D and E is in the constructive possession of the grand jury, and is therefore not subject to disclosure under the Act.

Next, you claim that criminal history record information (“CHRI”) is excepted from disclosure under section 552.101 of the Government Code. This section excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses laws that make 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” but does not include “driving record information maintained by [the Department of Public Safety (“DPS”)] under Subchapter C, Chapter 521, Transportation Code.” Gov’t Code § 411.082(2).

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.”). Under chapter 411 of the Government Code, a criminal justice agency may obtain CHRI from DPS or from another criminal justice agency. Gov’t Code §§ 411.083(b)(1), .087(a)(2), .089(a). However, CHRI so obtained is confidential and may only be disclosed in very limited instances. Gov’t Code § 411.084; *see also* Gov’t Code § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, to the extent that the submitted documents contain CHRI that was obtained pursuant to these state and federal regulations, such information must be withheld under section 552.101 as information made confidential by law.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You contend that the originating addresses and telephone numbers of 9-1-1 callers that are contained in the submitted call sheets are confidential under chapter 772. However, we note that the submitted information does not contain the originating addresses of the 9-1-1 callers. We also note that you have not explained in what type of emergency communication district the

district attorney is located. To the extent the originating telephone numbers of 9-1-1 callers were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the originating telephone numbers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if the telephone numbers were not provided by a 9-1-1 service supplier to a 9-1-1 district subject to section 772.118, 772.218, or 772.318, the originating telephone numbers may not be withheld on this basis and, as you claim no other exception for them, they must be released.

You also claim that some of the information contained in the submitted documents is protected under common-law privacy. Section 552.101 also encompasses the common-law right to privacy which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We note, however, that because the common-law right to privacy is a personal right that lapses at death, common-law privacy does not protect information that relates only to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). Therefore, to the extent the submitted information contains compilations of criminal history information of a living individual, that information is confidential under section 552.101 and must be withheld based on the reasoning set forth in *Reporters Committee*.

You also assert some of the remaining information is excepted under section 552.130. Section 552.130 of the Government Code 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)(1),(2). We note, however, that the purpose of section 552.130 is to protect the privacy interests of individuals. Since the right of privacy lapses at death, Texas motor vehicle record information that pertains to the deceased individual may not be withheld under section 552.130. *See generally Moore v. Charles E. Pierce Film Enters. Inc.*,

589 S. W. 2nd 489 (Tex. Civ. App.— Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-147 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). However, you must withhold the Texas motor vehicle record information we have marked that pertains to persons who are living under section 552.130.

Finally, we note that the submitted information contains social security numbers. Section 552.147 of the Government Code¹ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, social security numbers belonging to living persons must be withheld under section 552.147.² However, the decedent’s social security number may not be withheld on this basis.

To conclude, Exhibits D and E are not subject to disclosure. To the extent that the submitted information contains CHRI that was obtained from DPS or any other criminal justice agency, such information must be withheld under section 552.101 as information made confidential by law. To the extent the originating telephone numbers of 9-1-1 callers were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the originating telephone numbers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. To the extent the submitted information contains compilations of criminal history information of a living individual, that information is confidential under section 552.101 and must be withheld based on the reasoning set forth in *Reporters Committee*. The district attorney must withhold the motor vehicle information that we have marked that pertains to a living individual under section 552.130. The social security number of the living individuals must be withheld under section 552.147 of the Government Code. The remaining submitted 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

¹Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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).

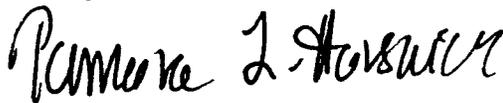
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 Office of the Attorney General 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. 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 231948

Enc. Submitted documents

c: Mr. Daniel H. Hernandez
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(w/o enclosures)