



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2005

Mr. Brendan Guy
Assistant County Attorney
Henderson County
100 East Tyler Street, Room 100
Athens, Texas 75751

OR2005-09994

Dear Mr. Guy:

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# 235683.

The Henderson County Sheriff's Department (the "sheriff") received a request for the arrest report, pre-booking form, book-in form, photographs and any other documents generated as the result of the arrest of a particular individual. We understand you to claim that the requested information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the sheriff's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for an attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Within fifteen days of receiving the request, the governmental body must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which

exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). Although you state that the sheriff received the present request on August 18, 2005, the requestor's attorney informs us, and provides documentation showing, that the request was originally sent on July 31, 2005. You did not request a ruling from this office until August 30, 2005. Consequently, we find that the sheriff failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists for withholding the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because sections 552.101 and 552.147 can provide a compelling reason to withhold information, we will address your arguments regarding these sections.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Exhibit 2 contains criminal history record information ("CHRI"), which is encompassed by section 552.101. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. 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. The definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See* Gov't Code § 411.082(2)(B). Sections 411.083(b)(1) and 411.089(a) authorize a 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. *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. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, the sheriff must withhold the CHRI in Exhibit 2 that we have marked under section 552.101 of the Government Code.

You note that the submitted information contains a social security number. 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. However, this section excepts information from disclosure in order to protect an individual’s privacy. Therefore, the requestor, as the authorized representative of the individual at issue, is entitled to her social security number, and it may not be withheld under section 552.147. *See* Gov’t Code § 552.023. The remaining information must be released to the requestor.²

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

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).

²The records being released contain additional information relating to the requestor’s client that would be excepted from disclosure to the general public in order to protect the individual’s privacy. As such, the sheriff must request another ruling from our office if he receives a future request for this information from an individual other than the requestor or his client. *See* Gov’t Code § 552.023(b).

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,

A handwritten signature in black ink, appearing to read 'José Vela III', with a stylized flourish at the end.

José Vela III
Assistant Attorney General
Open Records Division

JV/seg

Ref: ID# 235683

Enc. Submitted documents

c: Mr. David D. Davis
Dippel & Davis, PLLC
12201 Merit Drive, Suite 230
Dallas, Texas 75251
(w/o enclosures)