



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2005

Ms. YuShan Chang
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City of Houston
P.O. Box 1562
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OR2005-10356

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 235261.

The Houston Police Department (the "department") received two requests for three specified offense reports. You claim that the requested information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by an attorney representing one of the requestors. *See Gov't Code § 552.304* (providing that interested third party may submit comments stating why information should or should not be released).

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 section encompasses information that another statute makes confidential. Section 261.201(a) of the Family Code provides as follows:

¹ You acknowledge that the department failed to raise section 552.136 within the ten business day deadline mandated by section 552.301(b) of the Government Code. *See Gov't Code § 552.301(b)*. However, because section 552.136 is a mandatory exception that can provide a compelling reason to withhold information, we will consider your arguments under this exception. *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).

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201. Upon review of the information in Exhibit 2, we determine that the information was not used or developed in relation to an investigation under Chapter 261 of the Family Code. Thus, we conclude that Exhibit 2 is not confidential under section 261.201 and may not be withheld under section 552.101 of the Government Code.

You contend that the information in exhibit 4 is confidential under section 552.101 in conjunction with section 51.14 of the Family Code. Prior to its repeal by the Seventy-Fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 only applies to records of a “child,” which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). You acknowledge that neither of the suspects in the offense report are under seventeen years of age, but argue that the reference to a juvenile suspect in an unrelated offense is so intertwined with the underlying offense that the entire report must be withheld. We disagree. Because the submitted offense report does not indicate that either of the suspects were ten years of age or older and under seventeen years of age at the time of the incident, the report does not constitute a law enforcement record concerning a “child” for purposes of section 51.14. We therefore conclude that exhibit 4 is not made confidential under section 51.14 of the Family Code, and it may not be withheld under section 552.101 on this basis.

Section 552.101 also encompasses the common law right of privacy, which protects information if it: 1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and 2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court

in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a government body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional or job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical disabilities).

You seek to withhold the information in exhibit 2 in its entirety under section 552.101 of the Government Code on the grounds that the offense report relates to the alleged sexual assault of a deceased child crime victim. You also seek to withhold portions of exhibit 3 relating to a deceased crime victim on privacy grounds under section 552.101. Because a person's right to privacy lapses upon the person's death, the department may not withhold any of the information in exhibits 2 and 3 on the basis of the decedents' right to privacy. *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.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded”) (quoting Restatement of Torts 2d); Attorney General Opinion JM-229 (1984) (“the right of privacy lapses upon death”), Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). However, we have marked information that the department must withhold under section 552.101 of the Government Code in conjunction with the common law privacy interests of other individuals. None of the remaining submitted information is confidential under common law privacy, and may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *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 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. *See Gov't Code* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find that none of the submitted information is CHRI that is subject to Chapter 411, subchapter F.

We note that a portion of the remaining submitted information is subject to section 1703.306 of the Occupations Code. Section 1703.306 governs information obtained in the course of conducting a polygraph examination and provides that “a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination” except to certain categories of people. Occ. Code § 1703.306. The requestor does not fall within any of the enumerated categories; therefore, the information that we have marked is confidential under section 1703.306 and must be withheld under section 552.101 of the Government Code.

You assert that some of the remaining information in exhibits 2, 3 and 4 is excepted under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state;[or]
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130. Therefore, we agree you must generally withhold the highlighted Texas-issued motor vehicle record information under section 552.130. We have also marked additional information that must be withheld on this basis. We note, however, that the purpose of section 552.130 is to protect the privacy interests of individuals. Some of the motor vehicle information you have highlighted pertains to an individual who is deceased. Since the right of privacy lapses at death, the department may not withhold the deceased individual's motor vehicle record information. *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.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-147 (N.D. Tex. 1979); Attorney General Opinions JM-229; H-917; Open Records Decision No. 272 at 1. If, however, a living individual has an ownership interest in the deceased victim's vehicle, the Texas motor vehicle record information pertaining to the living individual must be withheld under

section 552.130. If no living individual has an ownership interest in the vehicle, then the information must be released.

You also assert that some of the remaining information in exhibit 3 is excepted under section 552.136 of the Government Code. Section 552.136(b) states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). The department must withhold the account numbers you have marked under section 552.136.

You state that the submitted information contains social security numbers. Section 552.147 of the Government Code² provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Public Information Act. Therefore, the department must withhold the marked social security numbers of living persons that are contained in the submitted information under section 552.147.³

In summary, the department must withhold the information we have marked in exhibits 2, 3, and 4 under section 552.101 of the Government Code in conjunction with common law privacy, and section 1703.306 of the Occupations Code. The department must withhold the motor vehicle record information it has marked in addition to the motor vehicle record information we have marked under section 552.130 of the Government Code. Additionally, if a living person has an ownership interest in a deceased victim’s vehicle, the motor vehicle record information pertaining to the living individual must be withheld under section 552.130. The department must withhold the account numbers it has marked under section 552.136 of the Government Code. The department must also withhold the social security numbers of living persons that are contained within the submitted information under section 552.147 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

²Added 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).

³We 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.

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 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,



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Open Records Division

LVC/segh

Ref: ID# 235261

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