



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 20, 2006

Ms. Lisa K. Mitchell  
Assistant District Attorney  
Collin County Courthouse  
210 S. McDonald, Suite 324  
McKinney, Texas 75069

OR2006-00674

Dear Ms. Mitchell:

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# 240646.

The Collin County District Attorney's Office (the "district attorney") received a request for all information regarding a case against the requestor. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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<sup>1</sup>Although you initially raise section 552.111 of the Government Code, you have submitted no arguments in support of withholding information under this section. Thus, you have waived this exception. See Gov't Code §§ 552.301, .302.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information is part of a completed investigation made by the district attorney. Therefore, as prescribed by section 552.022, the district attorney must release the submitted information unless it is excepted from disclosure under section 552.108 or expressed confidential under other law. You claim that this information is excepted by section 552.103 of the Government Code. However, section 552.103 is a discretionary exception to public disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 does not qualify as other law that makes information confidential. Thus, the district attorney may not withhold the submitted information under section 552.103 of the Government Code. However, section 552.101 can provide a compelling reason to withhold information. Accordingly, we will address your arguments under sections 552.101 and 552.108.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information protected by common-law privacy. Common-law privacy 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). When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). You assert that information compiled by the district attorney would be protected by common-law privacy. In this instance, however, the requestor is the subject of the requested information. As such, the requestor has a special right of access and any information that would be protected from public disclosure for the purpose of protecting his own privacy interests. *See* Gov't Code § 552.023 (person has right of access to information that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests); Open Records Decision No. 481 (privacy theories not implicated when individual requests information concerning himself). Therefore, the district attorney may not withhold any of the submitted information on privacy grounds under section 552.101 and *Reporters Committee*.

We next address your claim that all of the submitted information is excepted under section 552.108 of the Government Code. Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

(b) An 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 is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state

Gov't Code § 552.108(a)(1), (a)(4), (b)(1), (b)(3). Generally a government body claiming section 552.108(a)(1) or 552.108(b)(1) must explain how and why the release of the information would interfere with a particular criminal investigation or prosecution. *See*

Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You claim that the submitted information is still pending and indicate that the defendant has not exhausted all appellate and postconviction remedies. Upon review, however, we find that a mere chance of an appeal is not sufficient to demonstrate that the release of the submitted information will interfere with your prosecution or law enforcement efforts. Thus, the district attorney may not withhold all of the submitted information under section 552.108(a)(1) or section 552.108(b)(1).

However, sections 552.108(a)(4) and 552.108(b)(3) are applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. In this instance, you represent that some of the submitted information consists of the district attorney's work product. The information you claim as work product reveal the attorneys' mental impressions and legal reasoning regarding the handling of the case against the requestor. After reviewing the submitted documents and your representations, we agree that the material marked as attorney work product may be withheld under section 552.108(a)(4) and 552.108(b)(3).

Next, you claim that a portion of the remaining submitted information contains criminal history record information ("CHRI"), which is also encompassed by section 552.101. CHRI generated by the National Crime Information Center or the Texas Crime Information Center is confidential and thus excepted from disclosure under section 552.101 of the Government Code. 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.* Sections 411.083(b)(1) and 411.089(a) of the Government Code 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 the Department of Public Safety or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally Id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). We have marked portions of the submitted information that constitute CHRI and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses certain information about jurors in criminal cases. Information collected about jurors in the jury selection process is governed by article 35.29 of the Code of Criminal Procedure, which provides:

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror's

home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought.

Crim. Proc. art. 35.29. Article 35.29 makes confidential certain personal information pertaining only to those individuals who actually served on the petit jury in a criminal trial. In addition to the confidential information listed in article 35.29, "other personal information" which is confidential pursuant to article 35.29 includes the juror's present employer, business telephone number, and spouse's employer. Juror names, however, are not made confidential by article 35.29, and are not "other personal information" that is confidential pursuant to article 35.29. We have marked the types of information that the district attorney must withhold under section 552.101 of the Government Code in conjunction with article 35.29 with regard to individuals who actually served on the petit jury.

Finally, we note that the remaining submitted information also contains Texas motor vehicle record information. Section 552.130 of the Government Code 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;

[or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2).<sup>2</sup> The district attorney must withhold the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code. We note, however, that some of the Texas-issued motor vehicle records pertains to the requestor. Because section 552.130 protects individual privacy interests, the requestor has a special right of access under section 552.023 of the Government Code to his own Texas-issued motor vehicle record information. *See* Gov't Code § 552.023.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the “work product” information we have marked under section 552.108(a)(4) and (b)(3) may be withheld. The CHRI we have marked must be withheld under section 552.101 of the Government Code in connection with chapter 411 of the Government Code or federal law. The juror information we have marked must be withheld under section 552.101 of the Government Code in connection with article 35.29 of the Code of Criminal Procedure. The Texas-issued motor vehicle information we have marked must be withheld under section 552.130 of the Government Code. The remaining submitted information must be released.<sup>3</sup>

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).

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<sup>3</sup>We note the submitted documents contains information that would normally be confidential and that is not subject to release to the general public. *See* Gov’t Code § 552.352. However, the requestor in this instance has a special right of access to the information. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles). Because some of the information is confidential with respect to the general public, if the district attorney receives a future request for this information from an individual other than the requestor or her authorized representative, the district attorney should again seek our decision.

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,



Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MM/jh

Ref: ID# 240646  
Enc. Submitted documents

c: Mr. Michael Redlich  
720 Summerfield Drive  
Allen, Texas 75002  
(w/o enclosures)