



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2006

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P. O. Box 4087  
Austin, Texas 78773-0001

OR2006-00733

Dear Ms. Smith:

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# 240488.

The Texas Department of Public Safety (the "department") received a request for nine categories of information pertaining to a specified automobile accident. You claim that the 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.

Section 552.101 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 protected by other statutes. You assert that the information contained in Attachment A is confidential under section 2721(a) of title 18 of the United States Code. Section 2721(a) provides

"A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section[.]

18 U.S.C. § 2721(a)(1). Section 2725 defines motor vehicle record as "any record that pertains to a motor vehicle operator's permit, . . . title, . . . registration, or identification card

issued by a department of motor vehicles. *See* 18 U.S.C. § 2725(1). Section 2725 also defines personal information as “information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.” *See* 18 U.S.C. § 2725(3). After review of the submitted information, we agree that the information in Attachment A consists of a motor vehicle registration record containing personal information. We note, however, that section 2721(b)(13) allows a special right of access to information if the requestor demonstrates he has obtained the written consent of the individual to whom the information pertains. *See* 18 U.S.C. § 2721(b)(13). In this instance, the requestor has demonstrated that he is the attorney representing the individuals whose information is at issue, and thus has his clients’ consent to obtain their information. Therefore, the department may not withhold any of the information in Attachment A under section 552.101 in conjunction with section 2721 of title 18 of the United States Code.

Section 552.101 also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). 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, but 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 DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See* generally *id.* §§ 411.090-411.127. 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 note that, because the laws governing the dissemination of information obtained from the NCIC or TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from the DPS or another criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* Open Records Decision No. 565 at 10-12 (1990). Therefore, the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. We note, however, that the DPS has the authority to release an individual’s own CHRI to that individual. Gov’t Code § 411.083(b)(3).

You claim that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides that a motor vehicle

operator's or driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. See Gov't Code § 552.130. However, we note that section 552.130 protects privacy interests, and the right to privacy expires at death. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. 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); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, information pertaining to the motor vehicle records of a person who is now deceased may not be withheld under section 552.130. Furthermore, we note that pursuant to section 552.023 of the Government Code, an individual or their authorized representative has a special right of access to records that contain information relating to the individual that are protected from public disclosure by laws intended to protect that individual's privacy interests. See Gov't Code § 552.023. Accordingly, the department must only withhold the Texas motor vehicle record information we have marked under section 552.130, which pertains to living individuals who are not represented by the requestor. The remaining information you have marked under section 552.130 must be released.

In summary, the department must withhold: 1) the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code; and 2) the Texas motor vehicle record information we have marked under section 552.130. The remaining submitted information must be released to the requestor.<sup>1</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).

---

<sup>1</sup>We note that the information that is to be released contains information that is confidential with respect to the general public; however, the requestor, as the representative of the individuals at issue, has a right of access to this information that otherwise would be excepted from release under the Act. See Gov't § 552.023. Thus, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

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,



Candice M. De La Garza  
Assistant Attorney General  
Open Records Division

CMD/krl

Ref: ID# 240488

Enc. Submitted documents

c: Mr. R. Brandon L. Boehme  
Boehme & Moore, L.L.P.  
1824 Eighth Avenue  
Fort Worth, Texas 76110  
(w/o enclosures)