



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2006

Ms. Sara Lynn Hayes
Public Information Coordinator Designee
Twenty-First Judicial District of Texas
100 West Buck, Suite 407
Caldwell, Texas 77836

OR2006-12715

Dear Ms. Hayes:

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# 264309.

The District Attorney for the Twenty-First Judicial District (the "district attorney") received a request for all offense reports and documents pertaining to a case involving the requestor. You claim that the requested information is not subject to disclosure under the Act. In the alternative, we understand you to also claim that the requested information is excepted from disclosure based on sections 552.101, 552.108, 552.115, and 552.130 of the Government Code and privileged under Texas Rule of Civil Procedure 192.5. We have considered your arguments and reviewed the submitted information.

You assert that the submitted information consists of records of a grand jury. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a governmental body who is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). We note, however, that much of the submitted information consists of records that were created by the district attorney and the Washington County Sheriff's Department. These records are not grand jury records and

are therefore subject to public disclosure under the Act. However, to the extent that the remaining information at issue consists of actual records of the grand jury that are in the custody of the district attorney as the agent of the grand jury, such information is not subject to disclosure under the Act, and we do not address its public availability. Otherwise, the submitted information is subject to the remainder of this ruling as set forth below.

You claim that all of the submitted information is protected based on Texas Rule of Civil Procedure 192.5. However, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. The submitted information pertains to a criminal embezzlement case. Thus, the district attorney may not withhold any of the submitted information under rule 192.5.

Next, you claim that some of the submitted information consists of confidential criminal history record information (“CHRI”). Section 552.101 of the Government Code exempts from public 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. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations, which 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. 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)*. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We have marked the confidential CHRI that must be withheld under section 552.101.¹ None of the remaining information may be withheld on this basis.

¹We note that the individual to whom this information pertains can obtain his own CHRI from DPS. Gov’t Code § 411.083(b)(3).

We also note that the submitted information includes federal tax forms. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, these tax forms are confidential under section 6103(a), and the district attorney must withhold them under section 552.101 of the Government Code.

Next, we understand you to claim that incident report number 0600160 is excepted from disclosure under subsections 552.108(a)(2) and 552.108(b)(2) of the Government Code. A governmental body claiming these subsections must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2), (b)(2). Although you inform us that the "case has been closed," you have not explained to this office how the investigation related to the information at issue concluded. Thus, you have not demonstrated that the this information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. We therefore find that the district attorney has not met her burden under subsection 552.108(a)(2) or 552.108(b)(2), and this information may not be withheld on those bases.

Next, you claim that the submitted certificate of death is subject to section 552.115 of the Government Code. Birth or death records maintained by the bureau of vital statistics of the Texas Department of State Health Services or a local registration official are excepted from required public disclosure under section 552.115. *Id.* § 552.115. However, because the district attorney is not the bureau of vital statistics or a local registration official, a death certificate held by the district attorney may not be withheld under section 552.115. *See* Open Records Decision No. 338 (1982). Therefore, the submitted death certificate may not be withheld on this basis.

We understand you to raise section 552.130 of the Government Code for motor vehicle record information. This section excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. We note, however, that section 552.130 excepts information from disclosure in order to protect individuals' privacy. Accordingly, the requestor has a special right of access under section 552.023 of the Government Code to her own Texas motor vehicle record information, and it may not be withheld from her under section 552.130. *See id.* § 552.023(a) (a person or a person's authorized representative has special right of access to information excepted from public disclosure under laws intended to protect that person's privacy interest). The remaining Texas motor vehicle record information pertains to an individual who appears to be the requestor's spouse. As such, the requestor may also have a special right of access under section 552.023 to this information that would otherwise be protected based on the privacy interest of her spouse. *See id.* In this regard, if the requestor is seeking this information on behalf of her spouse, then she has a special right of access to her spouse's Texas motor vehicle record information pursuant to section 552.023, and that

information may not be withheld from her under section 552.130. If she is not seeking this information on behalf of her spouse, then the district attorney must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130.

We note that some of the remaining submitted information is subject to sections 552.136, 552.137, and 552.147 of the Government Code.² Section 552.136 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.” *Id.* § 552.136. Accordingly, the district attorney must withhold the bank account and credit card numbers we have marked pursuant to section 552.136.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses that we have marked do not appear to be of a type specifically excluded by section 552.137(c). As such, these e-mail addresses must be withheld under section 552.137 unless their owners have affirmatively consented to their release. *See id.* § 552.137(b).

Lastly, the remaining information includes a social security number. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. However, the social security number here belongs to the individual who appears to be the requestor’s spouse. If the requestor is seeking this information on behalf of her spouse, then she has a special right of access to her spouse’s social security number under section 552.023, and it may not be withheld from her based on section 552.147.³ Otherwise, if she is not seeking this information on behalf of her spouse, then the district attorney must withhold the social security number we have marked pursuant to section 552.147.

In summary, to the extent the submitted information consists of records of the grand jury that are in the custody of the district attorney as agent the agent of the grand jury, such information is not subject to disclosure under the Act. Otherwise, the submitted information is subject to the following: (1) the CHRI we have marked must be withheld under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F of the Government Code; (2) the submitted tax forms must be withheld under section 552.101

²The Office of the Attorney General will raise mandatory exceptions like sections 552.136, 552.137, and 552.147 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

³Like section 552.130, section 552.147 is intended to except information from disclosure in order to protect individuals’ privacy.

in conjunction with federal law; (3) unless the requestor is seeking this information on behalf of her spouse, the Texas motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code; (4) the bank account and credit card numbers we have marked must be withheld under section 552.136 of the Government Code; (5) the e-mail addresses we have marked must be withheld under section 552.137 of the Government Code unless their owners have consented to their release; (6) unless the requestor is seeking this information on behalf of her spouse, the social security number we have marked must be withheld under section 552.147 of the Government Code; and (7) the remaining submitted information must be released.⁴

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 ten 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); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

⁴Because some of this information would not be releasable with respect to the general public, the district attorney should again seek our decision if it receives another request for this information from a different requestor.

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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 264309

Enc: Submitted documents

c: Ms. Nanette Zernial
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(w/o enclosures)