



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2007

Mr. Denis C. McElroy  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2007-00198

Dear Mr. McElroy:

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# 268559.

The City of Fort Worth (the "city") received a request for the entire investigative file on a specified murder case. You claim that the submitted 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.

You inform us that some of the submitted information was obtained pursuant to a grand jury subpoena. 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. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and therefore are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983); *but see* Open Records Decision No. 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific

exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* Open Records Decision No. 513. Therefore, to the extent that any of the information at issue is held by the city as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. The rest of this decision is not applicable to such information. To the extent that the information at issue is not held by the city as an agent of the grand jury, so as to be subject to the Act, we consider it with the remaining submitted information.

This office recently issued Open Records Letter No. 2006-14726 (2006), which serves as a previous determination under section 552.301(a) of the Government Code for the city with respect to (1) a Texas driver's license number; (2) a Texas-issued state identification number; (3) a Texas license plate number; and (4) a Texas license year of a motor vehicle. Therefore, pursuant to that previous determination, the city must withhold these types of information in the submitted documents under section 552.130 of the Government Code. Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests). However, we will address your argument under section 552.130 for the information that is not subject to Open Records Letter No. 2006-14726.

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. Section 552.101 encompasses confidential criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 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. 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). 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). Accordingly, we agree that the information you have marked constitutes CHRI for the purposes of chapter 411 and must be withheld under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Therefore, the city must withhold the compilation of criminal history that you have marked under common-law privacy as encompassed by section 552.101 of the Government Code.

Next, section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 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). Thus, the city must withhold the remaining Texas motor vehicle record information you have marked under section 552.130.

In summary, to the extent that the submitted information is held by the city as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. To the extent that this submitted information is not held by the city as an agent of the grand jury, it is subject to this ruling. The city must continue to rely on Open Records Letter No. 2006-14726 (2006), with respect to (1) a Texas driver's license number; (2) a Texas-issued state identification number; (3) a Texas license plate number; and (4) a Texas license year of a motor vehicle. The city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law, as well as the information you have marked under section 552.101 in conjunction with common-law privacy. The city must also withhold the remaining Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The city must release the remaining submitted information to the requestor.

You also request that this office issue a previous determination allowing the city to withhold the following Texas-issued motor vehicle record information under section 552.130 of the Government Code: class designations, restrictions, expiration dates, license years for Texas-issued driver's licenses of living individuals, and vehicle identification numbers relating to a title or registration issued by an agency of the State of Texas in which a living individual owns an interest. Therefore, per your request, this letter ruling shall serve as a previous determination under section 552.301(a) that the following are excepted from public disclosure under section 552.130: (1) class designations, (2) restrictions, (3) expiration dates, (4) license years for Texas-issued driver's licenses of living individuals, and (5) vehicle identification numbers relating to a title or registration issued by an agency of the State of Texas in which a living individual owns an interest. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations). We note, however, that section 552.130 protects the privacy of the individual to whom the information relates. Therefore, a person's section 552.130 information must be released to that person or that person's authorized representative. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is protected by laws intended to protect person's privacy). Moreover, because section 552.130 was enacted to protect the privacy of an individual, the protection extinguishes upon the individual's death. This conclusion is consistent with prior decisions of this office, which have held that the exceptions to the Act that only protect a person's privacy interest do not survive the death of that person. *See* Attorney General Opinion H-917 (1976) (stating that common-law privacy under Gov't Code §§ 552.101 and 552.102 lapses on person's death); Open Records Decision Nos. 536 (1989) (stating that Gov't Code § 552.119 does not except peace officer's photograph after officer's death), 524 (1989) (stating Gov't Code § 552.114 does not except student records after student's death). Thus, the city may not withhold a deceased person's section 552.130 information. Further, this previous determination does not apply to Texas motor vehicle information found in a Peace Officer's Accident Report, form ST-3 or CRB-3. *See* Transp. Code §§ 550.061-.068 (regarding accident reports completed pursuant to Transp. Code ch. 550). Finally, the city may not withhold section 552.130 information in instances when a requestor has a statutory right of access to the information at issue. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

This previous determination applies only to the following types of information requested of the city: (1) class designations, (2) restrictions, (3) expiration dates, (4) license years for Texas-issued driver's licenses of living individuals, and (5) vehicle identification numbers relating to a title or registration issued by an agency of the State of Texas in which a living individual owns an interest. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the city need not ask for a decision from this office again with respect to these types of information requested of the city. *See id.*

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 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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/jww

Ref: ID# 268559

Enc. Submitted documents

c: Reese Dunklin  
Dallas Morning News  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)

Brooks Egerton  
Dallas Morning News  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)