



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 17, 2007

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251 1562

OR2007-06114

Dear Ms. Chang:

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# 278936.

The Houston Police Department (the "department") received a request for information pertaining to a specific incident. You state that you will release a portion of the responsive information. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a CRB-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor provided the department with two of the three requisite pieces of information. Therefore, the department must release the CRB-3 accident report in its entirety to the requestor in accordance with section 550.065(c)(4) of the Transportation Code.

Next, you claim that the information in Exhibit 2 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to an open and active criminal investigation. Based on this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we conclude that section 552.108 (a)(1) is applicable to the information in Exhibit 2.

We note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the information in Exhibit 2 may be withheld under section 552.108(a)(1).<sup>1</sup>

We now turn to your arguments against disclosure pertaining to the information in Exhibit 3. Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is made confidential by statute. Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 656 (1990). 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. The

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments for this information.

information submitted for our review contains CHRI generated by TCIC and NCIC. Therefore, the department must withhold the CHRI we have marked in Exhibit 3 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 that some of the remaining information in Exhibit 3 is excepted from disclosure under section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security number, and family member information of a peace officer, regardless of whether the officer requests confidentiality for that information under sections 552.024 or 552.1175 of the Government Code.<sup>3</sup> Section 552.117 also encompasses personal cellular telephone and pager numbers, provided that the cellular phone and pager service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001). Accordingly, the department must withhold the information we have marked in Exhibit 3 under section 552.117(a)(2).

Next, section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the department must withhold the information we have marked in Exhibit 3 pursuant to section 552.130 of the Government Code. However, we note that the request indicates that the requestor represents an insurance company. As such, this requestor may be the authorized representative of the individual to whom the marked motor vehicle record information belongs. Section 552.023 of the Government Code provides a person or a person's authorized representative a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. Section 552.130 is intended to protect privacy interests. In this instance, it is not clear that the requesting representative of the insurance company is the vehicle owner's authorized representative. Therefore, we are forced to rule conditionally. To the extent the requestor has a right of access to the Texas motor vehicle record information under section 552.023, the department must release the information we have marked under section 552.130. To the extent the requestor does not have a right of access to the information at issue, it must be withheld under section 552.130 of the Government Code.

In summary, the CRB-3 accident report must be released to the requestor in accordance with section 550.065(c)(4) of the Transportation Code. With the exception of basic information, the department may withhold the information in Exhibit 2 pursuant to section 552.108 of the Government Code. The department must withhold the information we have marked in

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

Exhibit 3 under (1) section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code, (2) section 552.117(a)(2) of the Government Code, and (3) section 552.130 of the Government Code, to the extent that the requestor does not have a special right of access to this information under section 552.023 of the Government Code. The remaining submitted 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 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,

A handwritten signature in black ink, appearing to read "M. Alan Akin". The signature is fluid and cursive, with a long horizontal stroke at the end.

M. Alan Akin  
Assistant Attorney General  
Open Records Division

MAA/jb

Ref: ID# 278936

Enc. Submitted documents

c: Ms. Christy Tooley  
Safeco Insurance  
1600 North Collins Boulevard, Suite 3000  
Richardson, Texas 75080  
(w/o enclosures)