



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2008

Mr. Dean C. Myane
County Attorney
Blanco County
P.O. Box 471
Johnson City, Texas 78636

OR2008-07069

Dear Mr. Myane:

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# 310859.

The Blanco County Sheriff's Department (the "department") received a request for copies of the case file pertaining to a specified incident, including inquests and interrogations. You state that you are releasing some of the responsive information. You state that there is no responsive information regarding inquests or interrogations. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). You claim that the remaining submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

¹Although you raise sections 552.141 and 411.083 of the Government Code, we note that sections 552.130 and 552.147 of the Government Code are the correct exceptions to raise for motor vehicle record information and social security numbers, respectively.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that you have redacted social security numbers, Texas driver's license numbers, birth dates, as well as other indiscernible information in the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147. You do not assert, however, nor does our review of our records indicate, that you have been authorized to withhold any of the remaining redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of most of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the department should refrain from redacting any information that it submits to this office in seeking an open records ruling. For the redacted information that we are unable to discern, the department has failed to comply with section 552.301, and such information is presumed public under section 552.302. *See Gov't Code* §§ 552.301(e)(1)(D), .302. Thus, we conclude that the department must release the remaining redacted information to the requestor. If you believe that the remaining redacted information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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. Section 552.101 of the Government Code encompasses section 261.201(a) of the Family Code, which provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert that the submitted neglectful supervision and abuse reports are confidential by law. Upon review, we agree that these reports are subject to section 261.201. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the department must withhold the reports we have marked under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code.³ See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 also encompasses information made confidential under other statutes. 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. See Gov't Code § 411.083. 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 *id.* 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. However, information relating to routine traffic violations is not excepted from release under section 552.101 of the Government Code on this basis. Cf. *id.* § 441.082(2)(B). Accordingly, the department must withhold the information we have marked pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.101 also encompasses section 1703.306 of the Occupations Code, which provides as follows:

- (a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of

³We note that the requestor, as mother of the child who is the subject of alleged abuse and neglect, may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules: shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if DFPS has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. Fam. Code § 261.201(g).

the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
 - (2) the person that requested the examination;
 - (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
 - (4) another polygraph examiner in private consultation; or
 - (5) any other person required by due process of law.
- (b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.
- (c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. The requestor does not fall within any of the enumerated categories; therefore, the department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

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). This exception protects personal privacy. Accordingly, the requestor has a right of access under section 552.023 of the Government Code to her own Texas driver's license information, and the department may not withhold that information

from this requestor under section 552.130.⁴ *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We have marked the information the department must withhold under section 552.130.

In summary, under section 552.101 of the Government Code, the department must withhold (1) the reports we have marked in conjunction with section 261.201 of the Family Code, (2) the CHRI we have marked in conjunction with chapter 411 of the Government Code, and 3) the polygraph information we have marked in conjunction with section 1703.306 of the Occupations Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.⁵

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

⁴Section 552.023(a) provides that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

⁵We note that some of the information being released is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than the individual whose information is at issue or her authorized representative, the department must again seek a ruling from this office.

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 challenge 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,



Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/jb

Ref: ID# 310859

Enc. Submitted documents

c: Ms. Yasmin Coronado
P.O. Box 151826
Austin, Texas 78715
(w/o enclosures)