



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2008

Mr. Cary Bovey  
Bovey & Bojorquez, L.L.P.  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2008-07698

Dear Mr. Bovey:

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# 311965.

The Navasota Police Department (the "department"), which you represent, received a request for all documents pertaining to the requestor from 2008. You state that the city will release some of the information. You claim that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. This section encompasses information protected by 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. 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 Texas 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 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). You state that the information you have marked is CHRI that does not belong to the requestor. However, this information does appear to belong to the requestor as the requestor's name is listed as an alias and the dates of birth and social security numbers are the same as the requestor. You state that the requestor is entitled to the release by the department of his own CHRI. However, as discussed above, a criminal justice agency may not release CHRI that is subject to chapter 411 except to another criminal justice agency or as otherwise provided by that chapter. Chapter 411 does not provide for the re-release of CHRI the department obtains from DPS to the person it concerns. Accordingly, the department must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.<sup>1</sup> The remaining information you seek to withhold is not CHRI and may not be withheld on that basis.

Section 552.101 also encompasses section 411.192 of the Government Code, which governs the release of information maintained by DPS concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides, in part:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

Gov't Code § 411.192(a). We have marked information that is related to a concealed handgun license. It appears the department obtained that information from the DPS. In this instance, the requestor is not a criminal justice agency. Therefore, the department must withhold the concealed handgun license information we have marked pursuant to section 552.101 in conjunction with section 411.192 of the Government Code.

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 chapter 411

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<sup>1</sup>We note that the requestor can obtain his own CHRI from DPS. Gov't Code § 411.083(b)(3).

of the Government Code and 2) the concealed handgun license information we have marked pursuant to section 552.101 in conjunction with section 411.192 of the Government Code. The remaining information must be released.<sup>2</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 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 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

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<sup>2</sup>We note that a portion of the remaining information would be excepted from disclosure by laws enacted to protect the requestor's privacy. The requestor, however, has a right of access to his private information. *See* Gov't Code § 552.023(a) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). However, if the department receives another request for this particular information from a requestor who does not have a special right of access to this information, then the department should again seek a decision from this office.

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 cursive script, appearing to read "Laura E. Ream".

Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 311965

Enc. Submitted documents