



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2008

Mr. Jason Day
City Attorney
City of Royse City
P.O. Box 638
Royse City, Texas 75189

OR2008-08821

Dear Mr. Day:

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# 315542.

The City of Royse City (the "city") received a request for a specified incident report. You state that you have provided a redacted copy of the report to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the portions of the submitted information deal with the detection, investigation, and prosecution of an ongoing case in which there has been no final disposition. Based upon this representation and our review of the submitted information, we conclude that the release of the information you have marked in green and the submitted CDs 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.*

per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the information you have marked in green and the submitted CDs.

However, 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* and includes, among other things, a detailed description of the offense and the identification and description of the complainant. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You state the city has released basic information to the requestor. Thus, the city may withhold the information it has marked in green and the submitted CDs under section 552.108(a)(1) of the Government Code.

Next, you assert that a portion of the remaining submitted information contains criminal history records excepted from disclosure pursuant to section 552.101 of the Government Code. Section 552.101 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 also encompasses information protected by other statutes. Chapter 411 of the Government Code deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). We note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. See Gov't Code § 411.082(2)(B) (definition of CHRI does not include driving record information). 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 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). Chapter 411 does not provide for the re-release of CHRI the city obtains from DPS to the person it concerns. Accordingly, you 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.¹ The remaining information you have marked in black is not CHRI and may not be withheld on that basis. However, we have marked a small portion of information that is private and therefore also excepted from disclosure under section 552.101. See *Indus. Found. v. Tex. Indus. Accident*

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

Bd., 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *cf. United States Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989).

Section 552.130 of the Government Code excepts from public disclosure 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(a)(1)-(2). We note that section 552.130 only applies to Texas motor vehicle record information. Therefore, the city may not withhold out-of-state motor vehicle record information on that basis. We further note that section 552.130 protects privacy interests. Pursuant to section 552.023, the requestor has a right of access to his own Texas motor vehicle record information. *See id.* § 552.023. Therefore, the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary: (1) the city may withhold the information it has marked in green and the submitted CDs under section 552.108(a)(1) of the Government Code; (2) the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and the common-law right to privacy; and (3) the city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.²

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). If the governmental body does not file suit over 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

²We note that the submitted information contains social security numbers. 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. The requestor has a right, however, to his/her own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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 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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 315542

Enc. Submitted documents

c: Mr. Luke Holley
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Commerce, Texas 75428
(w/o enclosures)