



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2008

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2008-09443

Dear Ms. Smith:

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# 315382.

The Texas Department of Public Safety (the "department") received a request for information pertaining to online access to a secure criminal history database, including identifying information of all entities and individuals registered to use the database. You indicate that the department will withhold social security numbers pursuant to section 552.147 of the Government Code.¹ You state that you will release some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.136, 552.137, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that the department sought clarification of the request from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which

¹Section 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.

information will be used). You inform us that the department has not received a response from the requestor. In this instance, the requestor asks for "a listing of all entities and/or individual registered and/or allowed to use the online, 'Crime Record Service-Criminal History Search' (Engine)." You state that "[g]enerating a list responsive to the instant request will require programming," and that the department "would prefer not to have to do that programming until your office has determined what information must be included in the response." While the department need not distill the requested information into the form of a list, we note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). As you have submitted responsive information for our review and raised exceptions to disclosure for these documents, we consider the department to have made a good faith effort to identify information that is responsive to the request, and we will address the applicability of the claimed exceptions to the submitted information.²

Section 552.137 of the Government Code exempts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137 (a)-(c). The e-mail address you have marked does not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of this e-mail address. Therefore, the department must withhold the e-mail address you have marked under section 552.137.

Section 552.139 of the Government Code provides that information is excepted from required public disclosure "if it is information that relates to computer network security or to the design, operation, or defense of a computer network." *Id.* § 552.139(a). You state that the department "permits authorized persons to access the criminal history database online, but such access requires that the user create an account to permit [the department] to verify access authorization and track usage." You also state that the submitted information contains user names and birth dates collected from each registered user. You explain that the user names and birth dates are "used to insure that only authorized persons are utilizing the [database]." You assert that "[d]isclosure of such information would facilitate unauthorized intrusions and compromise the integrity of the online access system." Based on your representations and our review of the information at issue, we find that the department must withhold the user names and birth dates you have marked under section 552.139 of the Government Code.³

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.

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

In summary, the department must withhold the e-mail address you have marked under section 552.137 of the Government Code. The department must withhold the user names and birth dates you have marked under section 552.139 of the Government Code. The remaining information must be released.

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 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,



Bill Dobie
Assistant Attorney General
Open Records Division

WJD/jh

Ref: ID# 315382

Enc. Submitted documents

c: Mr. Patrick Quinten
1711 Oak Street
McKinney, Texas 75069
(w/o enclosures)