



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2008

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2008-11322

Dear Ms. Camp-Lee:

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# 319311.

The Round Rock Police Department (the "department"), which you represent, received a request for information pertaining to a specified automobile collision. You state that the department has released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 exception encompasses information protected by chapter 411 of the Government Code, which 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). 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. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. 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. *See 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. We note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082(2)(B) (definition of CHRI does not include driving record information). Upon review, we find that none of the submitted information falls within the scope of chapter 411. Thus, none of the submitted information may be withheld on that basis.

We also understand the department to raise section 730.004 of the Transportation Code. Section 730.004 of the Transportation Code is also encompassed by section 552.101, and provides:

Notwithstanding any other provisions of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005 -730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Transp. Code § 730.004. Section 730.003 provides that, for purposes of chapter 730 of the Transportation Code:

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

...

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601.

Id. § 730.003(1), (4). Section 730.004 only applies to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). We do not believe that the department compiles or maintains motor vehicle records and, therefore, section 730.004 does not apply to the department. Accordingly, no part of the submitted information may be withheld under section 552.101 in conjunction with section 730.004 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy and excepts from public disclosure private information about an individual if the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989) (individual’s mortgage payments, assets, bills, and credit history). The department must withhold the financial information you have highlighted in green under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, section 552.130 of the Government Code excepts from disclosure information that relates to “(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [and] (2) a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1)-(2). We note that section 552.130 protects the privacy interest of the individual, and because that right of privacy is purely personal, it lapses upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Accordingly, the department may not withhold any information pertaining to the deceased individual pursuant to section 552.130. We have marked this information for release. We also note that the requestor is an attorney and as such, may have a right of access under section 552.023 of the Government Code to some of the remaining Texas motor vehicle record information.¹ In this instance, it is not clear, however, if the requestor represents an individual to whom any of the remaining motor vehicle record information pertains. Thus, we must rule conditionally. If the requestor is the authorized representative of an individual whose motor vehicle record information is at issue, the department may not withhold that individual’s motor vehicle record information from the requestor under section 552.130 of the Government Code. If the requestor is not an individual’s authorized representative, the department must withhold

¹Section 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 is protected from public disclosure by laws intended to protect that person’s privacy interests.

the remaining Texas driver's license numbers and motor vehicle record information you have highlighted in yellow under section 552.130 of the Government Code.

In summary, the department must withhold the financial information you have highlighted in green pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Except as we have marked for release and to the extent that the requestor is not the authorized representative of any of the individuals to whom the highlighted motor vehicle record information pertains, the department must withhold the information you have highlighted in yellow under section 552.130 of the Government Code. The remaining submitted 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).

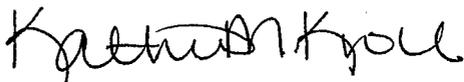
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 319311

Enc. Submitted documents

c: Mr. Rick Freeman
Attorney
811 Barton Springs Road, Suite 740
Austin, Texas 78704
(w/o enclosures)