



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2009

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2009-01692

Dear Ms. De La Garza:

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# 334416.

The Houston Police Department (the "department") received a request for all information concerning a specified accident, including any pictures, videos, sobriety tests, and witness statements. You state that you will release some of the responsive information. You claim that portions of the submitted information are excepted from disclosure under sections 552.130 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note, and you acknowledge, that the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. See Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. We note that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.² Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will address these exceptions.

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. Section 552.101 encompasses information protected by other statutes. Section 11 of article 49.25 of the Code of Criminal Procedure, which governs the disclosure of autopsy photographs, provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. There is no indication that the exceptions to confidentiality provided in section 11 are applicable in this instance. Therefore, the autopsy photographs in the submitted information are confidential under article 49.25 of the Code of Criminal Procedure and must be withheld under section 552.101 of the Government Code.

The submitted information contains criminal history record information. Section 552.101 also encompasses chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas

²The Office of the Attorney General will raise a mandatory exception such as section 552.101 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 (the "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 the 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 the 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. A portion of the remaining information constitutes CHRI generated by TCIC and NCIC. Therefore, the department must withhold this information, which we have marked, pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

Next, you contend the remaining information contains Texas driver's license and motor vehicle record information that is subject to section 552.130 of the Government Code, which 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[.]

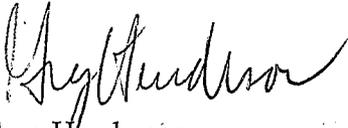
Id. § 552.130. We note, however, that section 552.130 protects privacy. The requestor in this instance represents an insurance company. Thus the requestor may have a right of access to the insured individual's information under section 552.023 if she is the individual's authorized representative. *See generally id.* § 552.023(b). Thus, to the extent the requestor is the authorized representative of the insured individual, she has a right of access to the insured's marked Texas driver's license and motor vehicle information, and it may not be withheld under section 552.130. If the requestor is not the authorized representative of the insured individual, the department must withhold the driver's license information belonging to the insured individual. In either case, the department must withhold the driver's license information belonging to the other individual under section 552.130 of the Government Code.

In summary, the autopsy photographs in the submitted information are confidential under article 49.25 of the Code of Criminal Procedure and must be withheld under section 552.101 of the Government Code. The department must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 of the Government Code. To the extent the requestor does not have a special right of access to the marked information of the insured individual at issue, it must be withheld pursuant to section 552.130 of the Government Code. The driver's license information belonging to the other individual must also be withheld under section 552.130 of the Government Code. The remaining information must be released to the requestor.³

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/jb

Ref: ID# 334416

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that the remaining 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. However, if the requestor is the authorized representative of one of the individuals, she has a right of access to that individual's social security number and it must be released to her. *See generally* Gov't Code §552.023(b).