



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 7, 2009

Ms. Yvette Aguilar  
Assistant City Attorney  
City of Corpus Christi, Legal Department  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2009-10999

Dear Ms. Aguilar:

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# 351595.

The City of Corpus Christi (the "city") received a request for the complete investigation file pertaining to a specified incident. You indicate you have released basic information 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.

Initially, you argue that the submitted information was the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2009-10420 (2009) and 2009-10472 (2009). In Open Records Letter No. 2009-10420 we concluded that, with the exception of basic information, the Corpus Christi Police Department (the "department") may withhold the recordings and call logs pertaining to the specified incident that is the subject of this request pursuant to section 552.108(a)(1). In Open Records Letter No. 2009-10472, we concluded that the department may withhold the information they marked in the police report pertaining to the incident at issue under sections 552.108(a)(1) and 552.130. As we have no indication that the law, facts, and circumstances surrounding these prior rulings have changed, you may continue to rely on Open Records Letter Nos. 2009-10420 and 2009-10472 as previous determinations and withhold or release the responsive information in this request that was previously ruled on in accordance with these prior rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of

previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We note, however, that portions of the submitted information were created after the dates that the previous requests for information were received. Thus, this information was not submitted to this office for a determination and was therefore not the subject of either previous ruling. Accordingly, we will address the city's arguments against disclosure of the remaining information that is not subject to Open Records Letter Nos. 2009-10420 and 2009-10472.

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 section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, in this instance, if the requestor is the attorney for the deceased individual's estate, then the requestor has a right of access to these fingerprints under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, to the extent the requestor is the authorized representative of the deceased individual whose fingerprints are at issue, the city must release the marked fingerprints under section 560.002 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). If the requestor is not the deceased individual's authorized representative, the submitted fingerprints are confidential under section 560.003 of the Government Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). 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. *See* Gov't Code § 411.083. 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 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 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.

We note that because the laws that govern the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. The city must withhold the CHRI that we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

You have marked portions of the remaining information at issue under section 552.108(a)(1) of the Government Code, which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” 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* Gov’t Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked relates to a pending criminal investigation. Based on this representation, we conclude that the city may withhold the information you have marked under section 552.108(a)(1). *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). As our ruling is dispositive for this information, we need not address your remaining argument to withhold the submitted autopsy photographs.

You also assert that portions of the remaining information are excepted from disclosure under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We agree that the Texas motor vehicle record information you have marked in the remaining information is generally subject to section 552.130. However, we note that section 552.130 protects privacy interests. It appears that the requestor may be the authorized representative of the individual to whom a portion of the marked Texas motor vehicle record information belongs. Thus, if the requestor is acting as the authorized representative of the owner of any of the marked information, he has a right of access under section 552.023 to that individual’s Texas motor vehicle record information. *Id.* § 552.023(a) (a person’s authorized representative has a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests). If the requestor is not acting as the owner’s authorized representative, he does not have a right of access to any of the marked Texas motor vehicle record information, and the city must withhold it under section 552.130 of the Government Code.

In summary, the city may continue to rely on Open Records Letter Nos. 2009-10420 and 2009-10472 as previous determinations and withhold or release the responsive information in this request that was previously ruled on in accordance with these prior rulings. To the extent the requestor is the authorized representative of the deceased

individual whose fingerprints are at issue, the city must release the marked fingerprints under section 560.002 of the Government Code. However, if the requestor is not the deceased individual's authorized representative, the submitted fingerprints must be withheld under section 552.101 in conjunction with section 560.003 of the Government Code. The city must withhold the CHRI that we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. The city may withhold the information you have marked under section 552.108(a)(1). If the requestor is not acting as the vehicle owner's authorized representative, he does not have a right of access to any of the marked Texas motor vehicle record information, and the city must withhold it under section 552.130 of the Government Code. However, if the requestor is acting as the authorized representative of the vehicle owner, he has a right of access under section 552.023 to the owner's Texas motor vehicle record information, and it must be released. The remaining information must be released to the requestor.

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](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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 351595.

Enc. Submitted documents

c: Requestor  
(w/o enclosures)