



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 3, 2009

Mr. Brett Colston  
Assistant Chief of Police  
Waxahachie Police Department  
216 North College  
Waxahachie, Texas 75165

OR2009-17132

Dear Mr. Colston:

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# 363128.

The Waxahachie Police Department (the "department") received a request for a specified incident report and the pictures pertaining to the report. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You specifically raise section 552.108(a)(2) of the Government Code, which provides in relevant part that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must sufficiently explain how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) protects law enforcement records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. In this instance, however, you inform this office that the submitted information pertains to a pending criminal investigation. Because of this contradictory argument, we find that you have failed to demonstrate that the information at issue pertains

to a criminal investigation that concluded in a final outcome other than a conviction or a deferred adjudication. Accordingly, the submitted information may not be withheld under section 552.108(a)(2).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>1</sup> Gov’t Code § 552.101. Section 552.101 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. *Id.* § 411.083(a). 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 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 have marked information in the submitted report that consists of CHRI that is confidential under section 411.083. Accordingly, the department must withhold this information pursuant to section 552.101 in conjunction with chapter 411 of the Government Code and federal law.

Section 552.130 of the Government Code 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. *Id.* § 552.130(a)(1), (2). We have marked the Texas motor vehicle record information that the department must withhold under section 552.130 of the Government Code.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.<sup>2</sup> *Id.* § 552.147(a). Accordingly, the department may withhold the social security number in the remaining information under section 552.147 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with chapter 411 of the Government Code and federal law. The department must also withhold the information we have marked under section 552.130 of the Government Code. The department may withhold the social security number in the remaining information under section 552.147 of the Government Code. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/sdk

Ref: ID#363128

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>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.