



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 30, 2010

Mr. Mack Reinwand
Assistant City Attorney
Legal Division
P.O. Box 1065
Arlington, Texas 76004-1065

OR2010-04458

Dear Mr. Reinwand:

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# 374663 (APD No. 2010-01-044).

The Arlington Police Department (the "department") received a request for Police Report number 10-1745 pertaining to a named individual. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). You state that the department received the present request for information on January 12, 2010. This office does not count any holidays as business days for the purpose of calculating a governmental body's deadline under the Public Information Act (the "Act"). You inform us the department was closed for business on January 18, 2010. Thus, the tenth-business day deadline for this request was January 27, 2010. However, you did not request a decision from this office until January 28, 2010. Consequently, the department failed to comply with the requirements of section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Forth Worth 2005,

no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990, no writ); see Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you raise section 552.108 of the Government Code as an exception to disclosure of the submitted information, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the department may not withhold any of the submitted information pursuant to section 552.108. However, sections 552.101 and 552.130 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether these sections require you to withhold portions of the submitted information.¹

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 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." Gov't Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. See Open Records Decision No. 565 at 10-12 (1990); see generally Gov't Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. See *id.* § 411.089(b). However, information that relates to an individual's current involvement in the criminal justice system, including active warrant information, does not constitute CHRI. See *id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice

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

system). Therefore, the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F of the Government Code.

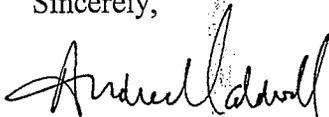
Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). Thus, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.²

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F of the Government Code and under section 552.130 of the Government Code. The remaining information must be released.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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the remaining information contains a social security number. 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. *See* Gov't Code § 552.147.

Mr. Mack Reinwand - Page 4

Ref: ID# 374663

Enc. Submitted documents

c: Requestor
(w/o enclosures)