



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2010

Chief Bruce Bradshaw
Comanche Police Department
110 East Grand
Comanche, Texas 76442

OR2010-06357

Dear Chief Bradshaw:

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# 378258.

The Comanche Police Department (the "department") received a request for reports relating to seven specified offenses involving a named individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

You seek to withhold the submitted information under section 552.108(a) of the Government Code, which provides in part:

(a) Information 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:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]
- (2) 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)(1)-(2). As a general rule, the protections afforded by sections 552.108(a)(1) and 552.108(a)(2) of the Government Code are mutually exclusive. Section 552.108(a)(1) is applicable to information pertaining to a pending criminal investigation or prosecution, while section 552.108(a)(2) protects law enforcement records pertaining to a criminal investigation or prosecution that concluded in a final result other than a conviction or a deferred adjudication. A governmental body that claims section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A) (governmental body must submit written comments stating what claimed exception applies that would allow information to be withheld); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body that claims section 552.108(a)(1) must demonstrate that release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Gov't Code* § 552.108(a)(1). A governmental body that claims section 552.108(a)(2) must demonstrate that the information at issue is related to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.108(a)(2).

You contend that this request for information “should be denied because [the responsive reports] fall within Section 552.108 of the Texas Government Code, investigations of [the specified offenses].” Having considered your representation, we find that you have not sufficiently demonstrated that release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Furthermore, you do not inform us that the submitted information pertains to investigations that concluded in results other than conviction or deferred adjudication. Thus, we find that you have not sufficiently demonstrated that the submitted information falls within the scope of section 552.108(a)(1) or section 552.108(a)(2). We therefore conclude the department may not withhold any of the submitted information under section 552.108 of the Government Code.

We note that sections 552.101 and 552.130 of the Government Code are applicable to some of the submitted information.¹ Section 552.101 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 that other statutes make confidential. Criminal history record information (“CHRI”) obtained from the National Crime Information Center (the “NCIC”) or the Texas Crime Information Center (the “TCIC”) is confidential under federal and state law. 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

¹This office will raise sections 552.101 and 552.130 on behalf of a governmental body, as these exceptions are mandatory and may not be waived. *See Gov't Code* §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

and their dispositions.” *Id.* § 411.082(2). Federal law governs the dissemination of CHRI obtained from the NCIC 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). The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state. *See id.* § 552.130(a)(1)-(2). The department must withhold the information we have marked under section 552.130 to the extent the information consists of Texas driver’s license or motor vehicle registration information.² We note that this exception is not applicable to out-of-state motor vehicle record information.

In summary: (1) the CHRI we have marked must be withheld under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code; and (2) the information we have marked under section 552.130 of the Government Code must be withheld to the extent it consists of Texas driver’s license or motor vehicle registration information.³ The rest of the submitted information must be released.

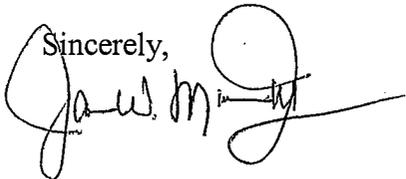
²We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number and a Texas license plate number under section 552.130, without the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

³We note that the remaining information includes an arrested person’s 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 under the Act. The requestor has a right to the arrested person’s social security number, however, if she is his authorized representative. *See generally* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/rl

Ref: ID# 378258

Enc: Submitted documents

c: Requestor
(w/o enclosures)