



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2010

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-07503

Dear Ms. Armstrong:

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# 380856 (ORR 2010-2353).

The Dallas Police Department (the "department") received a request for information pertaining to a named individual on a specified date, including a specified offense report. 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 representative sample of 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 confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI is defined as "information collected about a person by a

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* 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* 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. *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 subchapter F of chapter 411 of the Government Code. We note 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. Upon review, we find the information you have marked, as well as the additional information we have marked, constitutes CHRI that must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that information that reflects an individual’s personal financial decisions and is not related to a financial transaction between the individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we conclude that the information we have marked reflects personal financial decisions and does not involve a financial transaction between the individuals at issue and a governmental body. Therefore, the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy.

Based on your arguments, we understand you to raise 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[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception

to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to the pending criminal prosecution for an aggravated assault that allegedly occurred on March 8, 2010. However, the request for information and the submitted documents reflect that the listed suspect is deceased. Because you have not explained how criminal charges are possible in this case, the department has failed to demonstrate that release of the information at issue would interfere with the prosecution of the case. Therefore, the department may not withhold any of the submitted information under section 552.108(a)(1) of the Government Code.

We note portions of the remaining information may be excepted from disclosure under section 552.1175 of the Government Code.² Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). We have marked information that may be subject to section 552.1175. To the extent this information pertains to a currently licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b), the department must withhold it under section 552.1175(b).

²The 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).

Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license and registration information. *Id.* § 552.130. We note that the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *Moore* at 491; *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded") (quoting Restatement of Torts 2d); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision 272 at 1 (1981). The department must generally withhold the Texas driver's license and registration information you have marked, as well as the additional information we have marked and indicated, under section 552.130 of the Government Code. However, we note that some of the marked information relates to vehicles that were owned by an individual who is now deceased. Therefore, any license plate or registration information that pertains to the deceased individual must be withheld under section 552.130 only if a living person owns an interest in the vehicles at issue. If no living person owns an interest in the vehicles at issue, then the information we have marked related to those vehicles is not excepted from disclosure and must be released. In either case, the department must withhold the remaining marked information that pertains to living individuals under section 552.130 of the Government Code.³

We note that portions of the remaining submitted information appear to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, (1) the department must withhold the information you have marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) to the extent the information we have marked pertains to a currently licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the department must withhold it under section 552.1175(b); and (4) the department must withhold the information

³We 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 a Texas driver's license number, a copy of a Texas driver's license, and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

you have marked, as well as the information we have marked and indicated, under section 552.130 of the Government Code, to the extent such information relates to living individuals. The department must release the remaining information, but any information that is protected by copyright may only be released in accordance with copyright law.⁴

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 380856

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note 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.