



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2010

Mr. John S. Schneider  
First Assistant City Attorney  
City of Pasadena  
P.O. Box 672  
Pasadena, Texas 77501-0672

OR2010-08119

Dear Mr. Schneider:

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# 381563 (SL1023).

The City of Pasadena (the "city") received a request for information pertaining to the requestor's application for employment. You state the city has released some of the responsive information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.111, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the city's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See*

---

<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with section 552.111 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

*id.* § 552.301(e). In this instance, the city received the request for information on February 15, 2010. You did not, however, request a ruling from this office until March 29, 2010 or submit a copy of the information requested until March 30, 2010. Thus, we find the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.111 of the Government Code is a discretionary exception to public disclosure that protects the governmental body's interest and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, because you have failed to comply with the procedural requirements of section 552.301, the city has waived its claim under section 552.111. However, because sections 552.101 and 552.147 of the Government Code can provide compelling reasons to withhold information, we will consider whether or not any of the submitted information is excepted from disclosure under these exceptions.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses encompasses section 411.083 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Gov't Code § 411.083(a); Open Records Decision No. 565 (1990). 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. ORD 565. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 deems confidential CHRI that the Texas 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. *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 note an individual's current involvement in the criminal justice system, including active

warrant information, does not constitute criminal history record information. Upon review, we conclude the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 and federal law.<sup>2</sup> None of the remaining information at issue may be withheld under section 552.101 on that basis.

We note the submitted information contains a F-5 form ("Report of Separation of Licensee") submitted to TCLEOSE under chapter J of chapter 1701 of the Occupations Code. This form is confidential under section 1701.454 of the Occupations Code, which is also encompassed by section 552.101, and provides as follows:

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. In this instance, it does not appear that the named officer resigned due to substantiated incidents of excessive force or violations of the law other than traffic offenses. We, therefore, conclude that the city must withhold the submitted F-5 form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses section 1703.306 of the Occupations Code which provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

*Id.* § 1703.306. We have marked a polygraph examination report and information acquired from a polygraph examination. We note that the city has the discretion to release the marked information, which pertains to the requestor, pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees).

---

<sup>2</sup>We note that an individual may obtain her own CHRI from DPS. *See* Gov't Code § 411.083(b)(3).

Otherwise, the city must withhold the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.130 excepts from disclosure information that relates to a Texas motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(2). We have marked the Texas vehicle identification number the city must withhold under section 552.130.

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. *Id.* § 552.147(a). You state that the city will redact social security numbers, other than the requestor's, from the submitted documents pursuant to section 552.147(b), which 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. Accordingly, the city generally may withhold the social security numbers belonging to individuals other than the requestor. We note, however, one of the social security numbers belongs to the requestor's spouse. If the requestor is her spouse's authorized representative, she has a right of access to his social security number and it may not be withheld from her under section 552.147. *See generally id.* § 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).

We note that some of the submitted information is 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).

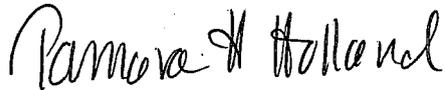
In summary, in conjunction with section 552.101 of the Government Code, the city must withhold (1) the information we have marked under chapter 411 and federal law and (2) the F-5 we have marked under section 1701.454 of the Occupations Code. The polygraph information we have marked is confidential under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code, but the city has the discretion to release this information to this requestor pursuant to section 1703.306(a)(1) of the Occupations Code. The city must withhold the Texas vehicle identification number we have marked under section 552.130 of the Government Code. The city may withhold the social security numbers belonging to individuals other than the requestor under section 552.147 of the Government Code, with the exception of her spouse's social security number if she is his

authorized representative. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.<sup>3</sup>

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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/jb

Ref: ID# 381563

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup>We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a). Therefore, if the city receives another request for this particular information from a different requestor, then the city must again seek a decision from this office.