



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2010

Mr. Bill Delmore
Assistant District Attorney
Ninth Judicial District
207 West Phillips, 2nd Floor
Conroe, Texas 77301

OR2010-14839

Dear Mr. Delmore:

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# 395141.

The District Attorney for the Ninth Judicial District (the "district attorney") received a request for the arrest report, offense report, and all other documents relating to a specified case. You state you have released some information to the requestor after redacting social security numbers and Texas driver's license numbers.¹ You claim the submitted information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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 chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination that authorizes all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas driver's license number under section 552.130 of the Government Code. We also note 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.

“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. 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 DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Upon review, we agree Appendix C constitutes CHRI generated by the National Crime Information Center or the Texas Crime Information Center. Accordingly, the district attorney must withhold Appendix C under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.108 of the Government Code provides in part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

....

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Id. § 552.108(b)(3). A governmental body claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You contend Appendix B was prepared by an attorney representing the state of Texas in anticipation of and in the course of preparing for litigation. You further assert this information reflects the mental impressions and legal reasoning of the attorney in this case. Upon review, we agree Appendix B reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, the district attorney may withhold this information under section 552.108(b)(3) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure of Appendix B.

In summary, the district attorney must withhold Appendix C under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The district attorney may withhold Appendix B under section 552.108(b)(3) of the Government Code.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 395141

Enc. Submitted documents

c: Requestor
(w/o enclosures)