



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2010

Mr. Jeff Bray
Sr. Legal Advisor
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-15330

Dear Mr. Bray:

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# 396227 (ORR #SANJ071910).

The Plano Police Department (the "department") received two requests from the same requestor for information. The first request seeks eight categories of information relating to a named defendant and three specified cases.¹ The second request seeks three categories of information related to the department's policies and written requests by department employees related to the requestor's previous requests for information. You state the department does not have information responsive to some categories of the first request.² You further state information responsive to the second request and portions of the first request have been released to the requestor with redactions pursuant to our previous decision

¹We note the department sought and received clarification of the request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body, governmental body may ask requestor to clarify or narrow request).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

in Open Records Decision No. 684 (2009).³ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

First, we must address the department's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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 id.* § 552.301(b). Under section 552.301(e), a governmental body must 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 id.* § 552.301(e). In correspondence to this office, the requestor states the present request is another attempt to obtain information from the department that was originally requested on May 3, 2010. On May 3, 2010, the requestor sought all information in the department's possession related to a named defendant and three specified offenses. In your letter to this office, you acknowledge the department released information responsive to the requestor's May 3, 2010, request. Because the present request seeks information in the department's possession related to the named defendant and the three specified offenses, the submitted information was responsive to the requestor's May 3, 2010, request. Thus, because the submitted information was responsive to the requestor's May 3, 2010, request, but the department did not request a ruling from this office or submit this information until August 2, 2010, we find the department 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 that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166

³Accordingly, in a letter dated September 1, 2010, you inform us the department withdraws its request for a ruling in regards to the second request. We note this office recently issued Open Records Decision No. 684, a previous determination authorizing all governmental bodies to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, 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. *See* Open Records Decision No. 150 at 2 (1977). As section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider your arguments under this exception. Further, we note portions of the submitted information are subject to section 552.130 of the Government Code, which can also provide a compelling reason to withhold information.⁴ Thus, we will address the applicability of section 552.130 to the submitted information.

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. This exception encompasses information other statutes make confidential, such as section 411.083 of the Government Code which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See 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 in accordance with 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 only release CHRI to another criminal justice agency for a criminal justice purpose. *See 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. The term CHRI does not include driving record information maintained by DPS. *Id.* § 411.082(2)(B). Upon review, we conclude the department must withhold the information we marked under section 552.101 in conjunction with section 411.083. *See id.* § 411.083(b)(3). However, the remaining information you seek to withhold does not constitute CHRI for chapter 411 purposes, and the department may not withhold this information on that basis.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides “[a] biometric identifier in the possession of a

⁴The 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).

governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that “[a] governmental body that possesses a biometric identifier of an individual . . . may . . . not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Accordingly, we find a person, or the person’s authorized representative, has a right of access under subsection 560.002(1)(A) to that person’s biometric identifiers. In this instance, the requestor may be the authorized representative of the named defendant. Thus, if the requestor is the authorized representative of the named defendant, and the submitted biometric identifiers belong to the named defendant, the requestor has a right of access to those biometric identifiers under subsection 560.002(1)(A), and they must be released. If, however, the requestor is not the authorized representative of the named defendant or the biometric identifiers do not belong to the named defendant, the department must withhold the biometric identifiers we marked under section 552.101 in conjunction with section 560.003.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, or permit issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1). Accordingly, the department must generally withhold the Texas driver’s license information we marked under section 552.130. However, we note section 552.130 protects privacy interests. As noted above, the requestor may be the authorized representative of the named defendant. *See id.* § 552.023(b). To the extent the requestor is acting as the authorized representative of the individual at issue, he has a right of access to the Texas driver’s license information pertaining to that individual, and it may not be withheld from him under section 552.130. To the extent the requestor is not acting as the named defendant’s authorized representative, the department must withhold the information we marked under section 552.130.

In summary, the department must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.083 of the Government Code. To the extent the requestor is not acting as the named defendant’s authorized representative or if the fingerprints do not belong to the named defendant, the department must also withhold the marked biometric identifiers under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. To the extent the requestor is not acting as the named defendant’s authorized representative, the department must also withhold the information we marked under section 552.130 of the Government Code.⁵ The remaining information must be released.

⁵As previously noted, Open Records Decision No. 684 authorizes all governmental bodies to withhold ten categories of information, including fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 396227

Enc. Submitted documents

c: Requestor
(w/o enclosures)