



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

Mr. Christopher Gregg
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2010-15519

Dear Mr. Gregg:

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# 396635.

The City of South Houston (the "city"), which you represent, received a request for all offense reports for murder, capital murder, justifiable homicide, and voluntary manslaughter cases that occurred in the city from January 1, 2004 to the date of the request. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. Section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. You state the submitted information in Exhibit A relates to pending criminal investigations and prosecutions. Upon review, we find that release of the responsive information in Exhibit A would interfere with the prosecution of these crimes. Therefore, section 552.108(a)(1) is applicable to the responsive information in Exhibit A. *See 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).

However, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Thus, the city must release the types of basic information listed in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the city may withhold the responsive information in Exhibit A under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov't Code § 552.101. Section 552.101 encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (the “NCIC”) or by the Texas Crime Information Center (the “TCIC”) is confidential under federal and state law. 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 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083(b)(1)

¹The 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).

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 criminal justice purposes. *See* Gov't Code § 411.089(b)(1). We note because the laws governing 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 Federal Bureau of Investigation ("FBI") numbers we have marked in Exhibit B constitute CHRI generated by the FBI which must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. *Id.* § 552.130(a)(1), (2). However, we note that section 552.130 protects the privacy interest of the individual, and because the right of privacy is purely personal, it lapses upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Therefore, the city may not withhold the deceased individual's Texas driver's license number under section 552.130. You assert the documents in Exhibit B should be withheld because they contain Texas motor vehicle record information. However, we find the city must only withhold the Texas motor vehicle record information we have marked in Exhibit B under section 552.130 of the Government Code.² The remaining information does not consist of motor vehicle information and may not be withheld under section 552.130.

Section 552.147 of the Government Code states "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. We note section 552.147 does not apply to the social security number of a deceased individual. *Id.* Accordingly, the city may withhold the social security numbers in Exhibit B that do not pertain to deceased individuals under section 552.147 of the Government Code.³

In summary, with the exception of basic information, the city may withhold the responsive information in Exhibit A under section 552.108(a)(1) of the Government Code. The city must withhold the FBI numbers we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city

²We 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 and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note that 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.

must withhold the Texas motor vehicle record information we have marked in Exhibit B under section 552.130 of the Government Code. The city may withhold social security numbers in Exhibit B that do not pertain to deceased individuals under section 552.147 of the Government Code. The remaining responsive information must be released.

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/em

Ref: ID# 396635

Enc. Submitted documents

c: Requestor
(w/o enclosures)