



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2010

Mr. Ed C. Jones
County Attorney
Angelina County
P.O. Box 1845
Lufkin, Texas 75902

OR2010-19554

Dear Mr. Jones:

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# 402932.

The Angelina County Attorney's Office (the "county attorney") received a request for the criminal file of a specified case. You claim that the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information was created after the date of the request. Thus, this information, which we have marked, is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the county attorney is not required to release that information.

Next, we must address the county attorney's obligations under section 552.301 of the Government Code, which prescribes the procedures that 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), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day

after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). You state the county attorney received the request for information on September 22, 2010. Because you do not inform this office the county attorney was closed for business any days between September 22 and October 13, 2010, we find the county attorney's 10- and 15-business-day deadlines were October 6, 2010 and October 13, 2010, respectively. While you raised sections 552.103 and 552.108 within the ten-business-day time period as required by subsection 552.301(b), the county attorney did not raise section 552.111 until after the ten-business-day deadline had passed. Additionally, your brief containing arguments stating how the raised exceptions apply and the submitted information was submitted to this office in an envelope postmarked October 14, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the county attorney failed to comply with the requirements mandated by subsections 552.301(b) and (e).

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 S.W.3d 342 (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). 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). Although you raise sections 552.103, 552.108, and 552.111 of the Government Code as exceptions to disclosure of the information at issue, these exceptions are discretionary in nature. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 is not compelling reason to withhold information under section 552.302), 663 at 5 (1999) (governmental body may waive section 552.111), 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. Accordingly, the county attorney may not withhold the information at issue pursuant to section 552.103, section 552.108, or section 552.111 of the Government Code. However,

we note portions of the submitted information are subject to sections 552.101, 552.1175, and 552.130 of the Government Code. As these exceptions can provide compelling reasons to overcome the presumption of openness, we will consider these exceptions for the submitted 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 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center 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.* Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except 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. Similarly, 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. Accordingly, the county attorney must withhold the CHRI we have marked in the submitted information under section 552.101 in conjunction with chapter 411 and federal law.

Section 552.1175 of the Government Code provides in pertinent part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]

(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), (5), (b). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided that the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). We have marked the information that may be excepted under section 552.1175. To the extent the individuals whose information we have marked are currently licensed peace officers or employees of the county attorney and elect to restrict access to this information in accordance with section 552.1175, the county attorney must withhold the marked information under section 552.1175 of the Government Code. If the individuals whose information is at issue are not licensed peace officers or employees of the county attorney or do not elect to restrict access to the information at issue, these individuals' information may not be withheld under section 552.1175 of the Government Code. However, the county attorney may only withhold the marked cellular telephone numbers if the telephone numbers are not paid for by a governmental body.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a). Thus, the county attorney must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.²

In summary, the county attorney must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 and federal law. If the individuals at issue are currently licensed peace officers or employees of the county

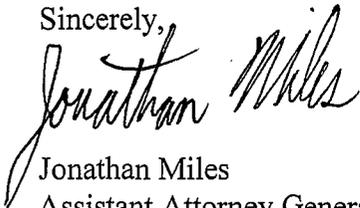
²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130, without the necessity of requesting an attorney general decision.

attorney and elect to restrict access to the information we marked in accordance with section 552.1175 of the Government Code, the county attorney must withhold this marked information. However, the county attorney may only withhold the marked cellular telephone numbers if the telephone numbers are not paid for by a governmental body. The county attorney must withhold the information we have marked pursuant to section 552.130 of the Government Code. The remaining 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 402932

Enc. Submitted documents

c: Requestor
(w/o enclosures)