



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2011

Ms. M. Ann Montgomery
Assistant County & District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2011-01051

Dear Ms. Montgomery:

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# 406494.

The Ellis County District Attorney's Office (the "district attorney") received a request for information related to a specified case. You state that some of the information will be released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). The submitted information consists of three completed incident reports and court-filed documents, which are expressly public under section 552.022. Therefore, the district attorney must release the completed reports, unless they are confidential under other law or excepted from disclosure under section 552.108. Further, the district attorney must release the court-filed documents unless the information is confidential under other law. Although you claim the submitted information is excepted from disclosure under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that a governmental body may waive. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas-1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information expressly confidential for purposes of section 552.022. Thus, the district attorney may not withhold any of the information at issue under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your arguments under that section for the completed reports. Further, sections 552.101 and 552.130 of the Government Code make certain information confidential and are "other law" for purposes of section 552.022. Thus, we will also consider your arguments under those exceptions.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted reports relate to a pending criminal prosecution. You seek to withhold the information you have marked in reports 201000202 and 201000155 and all of report 201000096 under section 552.108(a)(1). Based on your representations and our review, we conclude section 552.108(a)(1) is applicable to the submitted reports. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 187. Thus, the district attorney may withhold the information you have marked in reports 201000202

and 201000155 under section 552.108(a)(1) of the Government Code.¹ With the exception of basic information, the district attorney may withhold report 201000096 under section 552.108(a)(1) of the Government Code.

You have marked a telephone number to the Ferris Police Department under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. However, you have not directed our attention to any law, nor are we aware of any law, under which this information is considered to be confidential for purposes of section 552.101. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional-privacy), 478 at 2 (1987) (statutory confidentiality). Accordingly, the district attorney may not withhold the telephone number you have marked under section 552.101 of the Government Code.

Section 552.101 of the Government Code 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) and 411.089(a) of the Government Code 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). Upon review, we find the Federal Bureau of Investigation (“FBI”) number we have marked constitutes 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 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. You have marked the information you seek to withhold pursuant to section 552.130, which includes information pertaining to the requestor. We note, however, that section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own Texas motor vehicle record information under section 552.023 of the Government Code, and the district attorney may not withhold it from him under section 552.130. *See id.* § 552.023(a), (b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision

¹As our ruling is dispositive for this information, we do not address your argument under section 552.108(b)(1).

No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning the individual). Thus, the district attorney must withhold only the information we have marked under section 552.130 of the Government Code.²

Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. We note that section 552.147 also protects personal privacy. Accordingly, the requestor has a right of access to his own social security number under section 552.023 of the Government Code, and the district attorney may not withhold it from him under section 552.147. *See id.* § 552.023; ORD 481 at 4. Thus, the district attorney may withhold only the social security numbers we have marked under section 552.147.³

In summary, the district attorney may withhold the information you have marked in report numbers 201000202 and 201000155 under section 552.108(a)(1) of the Government Code. With the exception of basic information, the district attorney may withhold report number 201000096 under section 552.108(a)(1) of the Government Code. The district attorney must withhold the FBI number we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. In addition, the district attorney must withhold the information we have marked under section 552.130 of the Government Code. Finally, the district attorney may withhold the social security numbers we have marked under section 552.147 of the Government Code. The remaining information must be released.⁴

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,

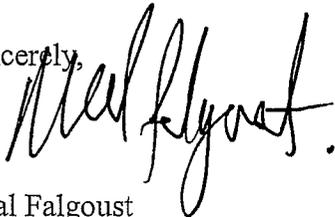
²We note this office has issued Open Records Decision No. 684 (2009), which serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code,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

³Section 552.147 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. *See* Gov't Code § 552.147(b).

⁴Because the information being released in this instance includes information that is confidential with respect to the general public, if the district attorney receives another request for this information from a different requestor, the district attorney must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 406494

Enc. Submitted documents

c: Requestor
(w/o enclosures)