



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 9, 2011

Ms. Tiffany Bull
Assistant City Attorney
Arlington Police Department
P.O. Box 1065 Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2011-08224

Dear Ms. Bull:

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# 420077 (APD Reference Nos. 3518, 3528, and 3534).

The Arlington Police Department (the "department") received requests from three requestors for information relating to a specified report number. You inform us one of the requestors no longer seeks access to the information at issue. You also state some of the requested information will be released on payment of costs. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

Initially, we address your statement that the department has access to the submitted information pursuant to an intergovernmental agency agreement under which the department is required to maintain the confidentiality of the information. Although section 552.101 of the Government Code encompasses "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," Gov't Code § 552.101, this exception may not be invoked based on an agreement to keep information confidential unless a governmental body is specifically authorized by statute to enter into such an agreement. *See* Open Records Decision Nos. 653 at 2 n.2 (1997); 444 at 6 (1986). We also note information is not confidential under the Act simply because the party that submits the information anticipates or requests it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act by agreement or contract. *See* Attorney General Opinion

JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information did not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). You have not identified any law that authorizes the department to enter into an agreement to keep any of the submitted information confidential. Therefore, the department must release the submitted information unless it falls within the scope of an exception to disclosure, notwithstanding any expectation or agreement to the contrary.

Next, we address your claims under section 552.101 of the Government Code. This exception encompasses information other statutes make confidential. Criminal history record information (“CHRI”) obtained from the National Crime Information Center (the “NCIC”) or the Texas Crime Information Center (the “TCIC”) is confidential under federal and state law. CHRI means “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.” Gov’t Code § 411.082(2). We note the definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety (the “DPS”) under subchapter C of chapter 521 of the Transportation Code. *See id.* Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). We note that because the laws that govern the dissemination of information obtained from the NCIC or TCIC are based on both law enforcement and privacy interests, a deceased individual’s CHRI 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. We also note section 411.083 of the Government Code is not applicable to active warrant or other information relating to a person’s current involvement in the criminal justice system. *See* Gov’t Code § 411.081(b) (criminal justice agency not prohibited from disclosing to public CHRI related to offense for which person is currently involved in criminal justice system). You contend the information submitted as Exhibit B consists of CHRI. Having reviewed the information at issue, we have marked CHRI the department must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. We conclude the remaining information in Exhibit B does not consist of CHRI and may not be withheld under section 552.101 on the basis of the federal law or subchapter F of chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses section 2721 of title 18 of the United States Code, which provides in part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9)[.]

...

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

See 18 U.S.C. § 2721(a), (c). For purposes of section 2721, section 2725 of title 18 of the United States Code defines “motor vehicle record” and “personal information” as follows:

(1) “[M]otor vehicle record” means any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles.

...

(3) “[P]ersonal information” means information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.

Id. § 2725(1), (3). We note some of the information in Exhibit C consists of motor vehicle records, as defined by section 2725(1), involving states other than Texas and includes personal information, as defined by section 2725(3). You state the department obtained this information from the DPS, which is a state department of motor vehicles for purposes of section 2721. *See* Attorney General Opinion JC-0423 (2001). We find the department is an authorized recipient of this information for purposes of section 2721(c). *See id.* § 2721(b)(1) (providing state department of motor vehicles may disclose personal information to any government agency, including any law enforcement agency, in carrying out its functions). Therefore, because the personal information in Exhibit C was obtained from a state department of motor vehicles by an authorized recipient, the information in question is confidential under the federal law. As we have no indication release of this information would be for a use permitted under section 2721(b), we conclude the department must withhold the information we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 2721(c) of title 18 of the United States Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques but was not applicable to generally known policies and procedures. *See* Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution); *compare* Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). We understand you to claim section 552.108(b)(1) for the remaining information in Exhibits B and C. Although you generally contend release of the information at issue “would expose the investigative techniques utilized by officers in their fight against crime,” we conclude you have not sufficiently explained how or why release of this information would interfere with law enforcement or crime prevention. We therefore conclude the department may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1)-(2). Because section 552.130 protects privacy, which is a personal right that lapses at death, this exception is not applicable to Texas driver’s license or motor vehicle information pertaining only to a deceased individual. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489

(Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). We also note section 552.130 is not applicable to out-of-state driver's license and motor vehicle information. We conclude the department must withhold the Texas driver's license and motor vehicle information we have marked in Exhibits C under section 552.130 of the Government Code. Although you believe section 552.130 may be applicable to other information in Exhibit C, we conclude none of the remaining information at issue falls within the scope of this exception. We therefore conclude the department may not withhold any of the remaining information in Exhibit C under section 552.130.

We note some of the remaining information in Exhibit C falls within the scope of section 552.136 of the Government Code, which provides that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). As this office has determined an insurance policy number is an access device for purposes of this section, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the department must withhold (1) the marked CHRI under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (2) the information we have marked under section 552.101 in conjunction with section 2721 of title 18 of the United States Code; (3) the marked Texas driver's license and motor vehicle information under section 552.130 of the Government Code; and (4) the marked insurance policy number under section 552.136 of the Government Code. The department must release the rest of the submitted information.¹

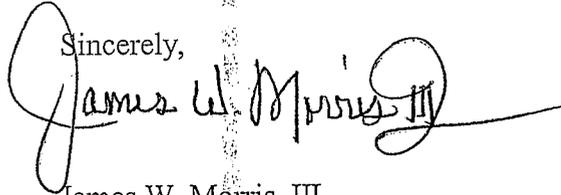
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

¹We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and an insurance policy number under section 552.136 of the Government Code. We also note the previous determination issued under section 552.130 in Open Records Decision 684 is applicable only to specified types of information encompassed by the exception, including, in addition to Texas driver's license and license plate numbers, a copy of a Texas driver's license, the portion of a photograph that reveals a Texas license plate number, and the portion of any video depicting a Texas license plate number. *See* ORD 684 at 14.

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 that reads "James W. Morris III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 420077

Enc: Submitted documents

c: Requestors
(w/o enclosures)