



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2011

Mr. Jon Thatcher
Assistant Criminal District Attorney
Rockwall County
1101 Ridge Road, Suite 105
Rockwall, Texas 75087

OR2011-09464

Dear Mr. Thatcher:

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# 422792.

The Rockwall County District Attorney's Office (the "district attorney") received a request for all information, including the probable cause affidavit, pertaining to a specified case. You state the district attorney has provided or will provide to the requestor some of the requested information, including basic information, pertaining to case number 2009-00022638. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You also state that, prior to providing any information to the requestor, the district attorney withheld or will withhold social security numbers under section 552.147 of the Government Code, as well as unspecified information pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).¹ You claim the submitted investigation records are excepted from disclosure under

¹Section 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. Gov't Code § 552.147(b). Furthermore, Open Records Decision No. 684 authorizes all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision.

sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a search warrant, which we have marked, that has been filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. Such information must be released unless it is expressly confidential under "other law." You claim the search warrant is excepted from disclosure under section 552.108 of the Government Code. This section, however, is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). As such, it is not "other law" for purposes of section 552.022(a)(17). Therefore, the district attorney may not withhold the marked search warrant under section 552.108 of the Government Code. As you have not claimed any other exceptions to disclosure for the search warrant, the district attorney must release the marked search warrant.

Section 552.108(a)(1) of the Government Code 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). A governmental body claiming section 552.108 must reasonably explain how and why the 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 seek to withhold Exhibits 3 through 7, and the information you have marked in Exhibit 2, under section 552.108. You indicate the submitted information regarding case number 2009-00022638 pertains to a pending criminal prosecution. Based on this indication and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. 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). Accordingly, the district attorney may withhold Exhibits 3 through 7, and the information you have marked in Exhibit 2, under section 552.108(a)(1) of the Government Code. We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

In the remaining information in Exhibit 2, you seek to withhold the submitted peace officer's accident report you have marked that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). 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 encompasses information other statutes make confidential, such as section 550.065(b) of the Transportation Code, which states, except as provided by subsection (c) or subsection (e), accident reports are privileged for the

confidential use of certain specified entities. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the district attorney with at least two of the three items of information specified by section 550.065(c)(4). Therefore, the district attorney must withhold the accident report you have marked in Exhibit 2 pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“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.* Section 411.083 of the Government Code deems confidential CHRI the 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. You generally claim that, to the extent the remaining information in Exhibit 2 contains CHRI, the CHRI is confidential under state and federal law. You have not, however, marked, or otherwise indicated, any information you claim constitutes CHRI. *See id.* § 552.301(e)(2) (governmental body must label copy of information at issue to indicate which exceptions apply to which parts of the information). Furthermore, upon review, we find none of the remaining information in Exhibit 2 consists of CHRI generated by the NCIC or TCIC. Consequently, you have failed to demonstrate how any portion of the remaining information in Exhibit 2 constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the district attorney may not withhold any of the remaining information in Exhibit 2 under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to

the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. You seek to withhold the witness statements and witness-identifying information you have marked in the remaining information in Exhibit 2 under common-law privacy pursuant to the holding in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). In that ruling, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment and held the identities of witnesses to and victims of sexual harassment were highly intimate or embarrassing information in which the public had no legitimate interest. In this instance, the submitted information pertains to a criminal investigation regarding a motor vehicle accident. Thus, you have not demonstrated how the holding in *Morales* applies to the information you seek to withhold. Furthermore, you have not shown how the witness information at issue is highly intimate or embarrassing. Consequently, you have failed to demonstrate the applicability of common-law privacy to the witness information you have marked in Exhibit 2, and the district attorney may not withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information in Exhibit 2 contains motor vehicle record information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release.² Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. 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 at 1 (1981). We have marked driver's license numbers, a license plate number, and a vehicle identification number that belong to living individuals. The district attorney must withhold this information under section 552.130 of the Government Code.

In summary, the district attorney may withhold Exhibits 3 through 7, and the information you have marked in Exhibit 2, under section 552.108(a)(1) of the Government Code. The district attorney must withhold the marked accident report in Exhibit 2 pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The district attorney must withhold the driver's license numbers, license plate number, and vehicle identification number we have marked in Exhibit 2 under section 552.130 of the Government Code. The district attorney must release the remaining information.

²The 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).

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 422792

Enc. Submitted documents

c: Requestor
(w/o enclosures)