



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 15, 2011

Mr. Peter Gruning  
Duvall, Gruning & Dietz, P.L.L.C.  
112 North LBJ Drive  
San Marcos, Texas 78666

OR2011-13372

Dear Mr. Gruning:

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# 430153.

The Lockhart Police Department (the "department"), which you represent, received a request for nine specified incident reports. You state you will release three incident reports in their entirety and portions of the remaining six incident reports to the requestor. You state the department will redact Texas driver's license numbers under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009) and social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim a portion of the submitted information is excepted from disclosure under section 552.1175 of the

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<sup>1</sup>Open Records Decision No. 684 is 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 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercedes Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684. 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. Gov't Code § 552.147(b).

Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we understand you to assert portions of the submitted information are subject to additional previous determinations. In Open Records Decision No. 673 (2001), this office set forth the circumstances under which a governmental body may rely on a ruling from this office as a previous determination for purposes of section 552.301(a) of the Government Code. See Open Records Decision No. 673. In that decision, this office noted there are two types of previous determinations. The first type exists when the requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling was addressed to the same governmental body, the ruling concluded the information is or is not excepted from disclosure, and the facts, circumstances, and law on which the prior ruling was based have not changed. *Id.* at 6-7. The second type is an attorney general decision that explicitly grants a governmental body or class of governmental bodies a previous determination that may be relied upon to withhold a specific type of information without seeking an attorney general's ruling if certain conditions are met. *Id.* at 7-8.

In this instance, we understand you to assert the department may withhold witness information in report numbers 200709147 and 201010083 pursuant to Open Records Decision No. 127 (1976) and withhold FBI and SID numbers in report numbers 200106132 and 200305118 pursuant to Open Records Decision No. 655 (1997). We understand you to contend Open Records Decision Nos. 127 and 655 are previous determinations of the second type. We note, however, Open Records Decision No. 127 merely summarizes the types of information considered basic information under section 552.108(c) of the Government Code and does not serve as a previous determination of the second type for any governmental body. See ORD 127 at 3-4 (listing types of information deemed public for purposes of Gov't Code § 552.108); Gov't Code § 552.108(c) (section 552.108 does not except from disclosure basic information about arrested person, arrest, or crime); *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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex 1976). We further note Open Records Decision No. 655 addresses limitations on the transfer of criminal history record information between governmental bodies and also does not serve as a previous determination of the second type for any governmental body. See ORD 655 (noting county could not obtain information from Texas Department of Public Safety ("DPS") regarding applicants for county employment because statute permitted DPS to transfer confidential criminal history information only to certain entities for certain purposes). Neither Open Records Decision No. 127 nor Open Records Decision No. 655 explicitly grants a governmental body or class of governmental bodies a previous determination that may be relied upon to withhold a specific type of information without seeking an attorney general's ruling. Therefore, the department may not withhold any information pursuant to Open Records Decision No. 127 or Open Records Decision No. 655.

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<sup>2</sup>Although you claim section 552.117 of the Government Code for the information at issue, we note section 552.1175 is the proper exception to raise in this instance because the department does not hold the information at issue in an employment capacity.

Next, we note you have redacted information in report number 200808183 beyond the ten categories of information authorized by Open Records Decision No. 684. Therefore, the department may not withhold any of the remaining information in report number 200808183 pursuant to Open Records Decision No. 684.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>3</sup> Gov’t Code § 552.101. Section 552.101 encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (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 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. Furthermore, 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 chapter 411, subchapter F. Upon review, we find a portion of the submitted information, which we have marked, constitutes CHRI generated by the FBI which the department must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.108 of the Government Code provides in relevant part the following:

(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;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

Gov't Code § 552.108(a)(1)-(2). Section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information that pertains to a specific

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<sup>3</sup>The 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).

pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) 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).

We understand you to generally raise section 552.108 for some of the submitted information. However, you do not inform us any of the information at issue pertains to an ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime; therefore, you have not met your burden under section 552.108(a)(1). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than conviction or deferred adjudication. You do not inform us any of the information at issue pertains to a criminal investigation that has concluded. Thus, you have also not met your burden under section 552.108(a)(2). Accordingly, the department may not withhold any of the information at issue under section 552.108(a)(1) or 552.108(a)(2) of the Government Code.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

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

...

(b) Information that relates to the home address, home telephone number, emergency contact information, 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); Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). Accordingly, to the extent the information we marked relates to a peace officer as defined by article 2.12 of the Code of Criminal Procedure and the peace officer elects to restrict access to the information

pertaining to him in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The department must withhold the information we have marked under section 552.1175 of the Government Code to the extent that information relates to a peace officer as defined by article 2.12 of the Code of Criminal Procedure and the peace officer elects to restrict access to the information pertaining to him. Except for Texas driver's license numbers, which you state you will redact under section 552.130 of the Government Code, and social security numbers, which you state you will redact pursuant to section 552.147 of the Government Code, the department must release the remaining information.

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](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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 430153

Enc. Submitted documents

c: Requestor  
(w/o enclosures)