



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2012

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2012-04322

Dear Ms. Rangel:

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# 448475.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for a list of internal investigations being conducted by the sheriff's office, any document reflecting disciplinary action taken against a specified deputy, and all affidavits or statements included with a specified offense report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

Next, we address the requestor's assertion that the sheriff's office did not comply with the procedural obligations of section 552.301 of the Government Code. Pursuant to section 552.301(b) of the Government Code, a governmental body must request a ruling from this office and state the exceptions that apply within ten-business-days after receiving the request for information. *See id.* § 552.301(b). The requestor states he first requested

information from the sheriff's office on December 7, 2011, and therefore, the sheriff's office was late in requesting a ruling from this office on January 13, 2012. However, the submitted information indicates the sheriff's office responded to the original request and informed the requestor there was no responsive information. We note this office must rely on a governmental body to make a good-faith effort to determine what information is responsive to a request. *See* Open Records Decision No. 590 (1991). Accordingly, based on the representation from the sheriff's office and information provided to this office, we conclude the sheriff's office timely responded to the prior request and the December 29, 2011, request is a new and separate request for information. The sheriff's office states its office was closed on January 2, 2012 in observance of New Year's Day. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the sheriff's office's ten-business-day deadline to request a ruling from this office in response to the December 29, 2011, request was January 13, 2012. The envelope in which the sheriff's office sent its request for a ruling to this office was postmarked January 12, 2012. *See* Gov't Code § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the sheriff's office complied with section 552.301(b) of the Government Code in requesting a ruling from this office.

We note the submitted responsive information consists of a completed investigation subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. *Id.* § 552.022(a)(1). We note you do not raise section 552.108. Thus, the sheriff's office may withhold the submitted information only to the extent it is made confidential under the Act or other law. Although you raise section 552.103 of the Government Code, this is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; *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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 473 (1987) (section 552.103 may be waived). Accordingly, the sheriff's office may not withhold any of the submitted information under that section. However, because sections 552.101, 552.1175, and 552.130 of the Government Code make information confidential for purposes of 552.022(a)(1), we will address the applicability of these sections to the submitted information.¹

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).

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 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. 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.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. 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). Thus, 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. We note section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with the criminal justice system). Upon review, we find none of the submitted responsive information constitutes confidential CHRI for the purposes of chapter 411 and therefore, none of the submitted information may be withheld on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure.” *Id.* § 552.1175(a)(1). Upon review, we find some of the submitted information pertains to peace officers employed by the sheriff’s office and held in an investigative capacity. Additionally, some of the submitted information pertains to a peace officer not employed by the sheriff’s office. Therefore, if the peace officers elect to restrict access to the information pertaining to them in accordance with section 552.1175(b), the sheriff’s office must withhold the information we have marked under section 552.1175 of the Government Code. In that case, the sheriff’s office also must

withhold the information we have indicated in one of the submitted audio recordings under section 552.1175 of the Government Code.²

The remaining information contains driver's license numbers. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1). Upon review, we find the sheriff's office must withhold the driver's license numbers we have marked in the remaining submitted information under section 552.130 of the Government Code. Additionally, the sheriff's office must withhold the driver's license number we have indicated in one of the submitted audio recordings under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the information we have marked in the submitted documents and the information we have indicated in one of the submitted audio recordings under section 552.1175 of the Government Code, if the peace officers elect to restrict access to the information pertaining to them in accordance with section 552.1175(b). The sheriff's office must withhold the driver's license numbers we have marked in the submitted information and the driver's license number we have indicated in one of the submitted audio recordings under section 552.130 of the Government Code. The remaining responsive information must be released to the requestor.³

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.

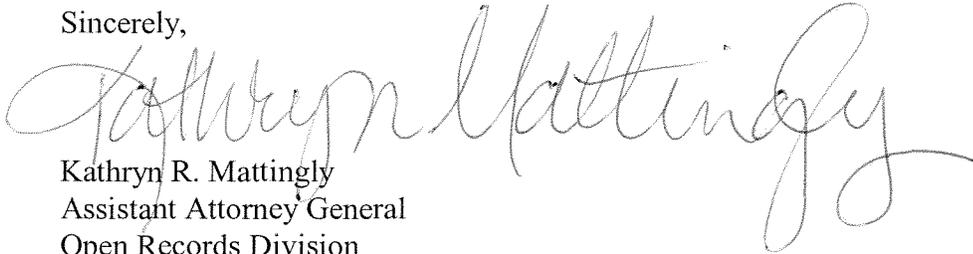
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

²We note, regardless of the applicability of section 552.1175, section 552.147(b) of the Government Code authorizes a governmental body to redact a living persons social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

³We note the information being released contains social security numbers. As previously noted, 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). We also note the information being released includes a driver's license number to which the requestor has a right of access as the authorized representative of the subject of the information at issue, which the sheriff's office would be required to withhold from the general public under section 552.130(a)(1) of the Government Code. Because section 552.130 protects personal privacy, the requestor has a right of access to his client's driver's license number under section 552.023 of the Government Code. *See id.* § 552.023(a). Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *Id.* § 552.130(c). Thus, if the sheriff's office receives another request for this same information from a person who would not have a right of access to the present individual's private information, section 552.130(c) authorizes the sheriff's office to redact this driver's license number.

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,

A handwritten signature in cursive script, appearing to read "Kathryn R. Mattingly". The signature is written in black ink and is positioned to the right of the typed name.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 448475

Enc. Submitted documents

c: Requestor
(w/o enclosures)