



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2012

Ms. Dana W. Cooley
Attorney at Law
P.O. Box 1006
Snyder, Texas 79550

OR2012-04474

Dear Ms. Cooley:

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# 448667.

The City of Snyder (the "city"), which you represent, received a request for all information pertaining to a specified arrest. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

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

(b) An 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 is excepted from [required public disclosure] if:

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). Subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body claiming subsections 552.108(a)(2) or 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2-3 (1986). Although you claim the submitted information is excepted from disclosure under sections 552.108(a)(2) and 552.108(b)(2), you represent that prosecution “*has not yet to date* resulted in a conviction or a deferred adjudication” (emphasis added). We note sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue is related to a concluded criminal case “that did not result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2). Upon review, we find you have failed to demonstrate the submitted information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Thus, we find you have not demonstrated the applicability of sections 552.108(a)(2) or 552.108(b)(2) to the submitted information. *See id.* § 552.301(e)(1)(A). Accordingly, the city may not withhold any of the submitted information under subsections 552.108(a)(2) or 552.108(b)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by statutes, including 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. 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 (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 that the Department of Public Safety (“DPS”) maintains, except that DPS

¹The 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).

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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). 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 Government Code chapter 411, subchapter F. Upon review, we find the information we have marked constitutes confidential CHRI. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

The submitted information also contains information subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides that information related to a motor vehicle operator's license 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. Gov't Code § 552.130(a)(1), (2). Therefore, the Texas motor vehicle information we have marked, and the motor vehicle information we have indicated in the submitted recording, is generally subject to section 552.130 of the Government Code. We note, however, the requestor may be the attorney of the individual whose motor vehicle information is at issue. As such, this requestor, if acting as the vehicle owner's personal representative, has a right of access to the Texas motor vehicle information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear whether the requestor is acting as the authorized representative of the individual whose motor vehicle information is at issue. Therefore, we must rule conditionally. To the extent the requestor has a right of access to the Texas motor vehicle information we have marked and indicated in the submitted video recording under section 552.023, the city must release the information at issue to this requestor.² To the extent the requestor does not have a right of access under section 552.023, the city must withhold the marked motor vehicle information, and the motor vehicle information we have indicated in the submitted recording, under section 552.130 of the Government Code.

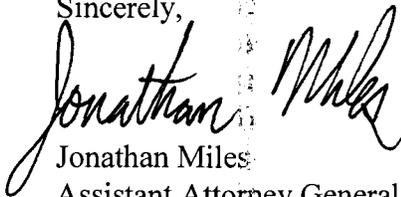
²In that case, should the city receive another request for this particular information from a different requestor, then the city should again seek a decision from this office. *See* Gov't Code § 552.301(a), .302.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. To the extent the requestor does not have a right of access under section 552.023, the city must withhold the Texas motor vehicle information we have marked, and the motor vehicle information we have indicated in the submitted recording, under section 552.130 of the Government Code. The remaining information must be released.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/som

Ref: ID# 448667

Enc. Submitted documents

c: Requestor
(w/o enclosures)