



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2012

Ms. Sue Koriath
Assistant Criminal District Attorney
Kaufman County
100 West Mulberry
Kaufman, Texas 75142

OR2012-04489

Dear Ms. Koriath:

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# 448661.

The Kaufman County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified prosecution. You state the district attorney's office has destroyed some of the requested information pursuant to its records retention schedule.¹ You state you have forwarded some of the requested information to the requestor, but claim the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we understand you have redacted driver's license numbers pursuant to section 552.130(a)(1) of the Government Code and a social security number under section 552.147 of the Government Code.² You state you have redacted a Louisiana license

¹The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²Section 552.130(c) allows a governmental body to redact the information described in section 552.130(a)(1) without the necessity of seeking a decision from the attorney general. 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). *Id.* § 552.130(d), (e). Gov't Code § 552.147(b) (governmental body may redact living person's social security number from public release without necessity of requesting decision from this office under the Act).

plate number pursuant to section 552.130 as well. Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold Texas license plate numbers, but not out-of-state license plate numbers, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Furthermore, 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), such as driver's license numbers, without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). However, the amendments are limited to the information described in subsections 552.130(a)(1) and (a)(3) and do not permit a governmental body to redact information described in subsection 552.130(a)(2) regarding motor vehicle titles and registration, such as a license plate number, without asking the attorney general for a decision. It appears you have also redacted a Federal Bureau of Investigation ("FBI") number, certain information pertaining to the offenses at issue, and the name of a defendant from the documents you have provided to the requestor. You do not assert, nor does our review of our records indicate, the district attorney's office has been authorized to withhold any of these remaining types of information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of this redacted information, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), 552.302.

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. This section encompasses information protected by other statutes. You assert some of the submitted information is confidential under former section 502.008 of the Transportation Code. However, former section 502.008 has been repealed. *See* Act of May 30, 2011, 82nd Leg., R.S., ch. 1296, § 247, 2011 Tex. Gen. Laws 3619, 3708. Therefore, the district attorney's office may not withhold any of the submitted information under section 552.101 on that ground.

Section 552.101 also encompasses section 508.313 of the Government Code, which is applicable to records of the Texas Department of Criminal Justice ("TDCJ"). Section 508.313 provides in part the following:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

...

(c) The department, on request or in the normal course of official business, shall provide information that is confidential and privileged under Subsection (a) to:

...

(4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

(d) In this section, "eligible entity" means:

(1) a government agency, including the office of a prosecuting attorney[.]

Id. § 508.313(a), (c)(4), (d)(1). Thus, the TDCJ may provide information that is encompassed by section 508.313 to an eligible entity, and such information remains confidential in the possession of the entity to which it was provided. *See id.* § 508.313(c)-(d); *see also* Open Records Decision No. 655 at 8 (1997) (information excepted from public disclosure under Act may be transferred between governmental agencies without destroying its confidential character if agency to which information is transferred has authority to obtain it). Some of the submitted information consists of releasee information the TDCJ provided to the district attorney's office pursuant to section 508.313. *See id.* § 508.313(c)(4), (d)(1). Thus, district attorney's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.³

Section 552.101 of the Government Code also 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. 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(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 criminal justice purposes. *See Gov't Code*

³As our ruling is dispositive, we do not address your argument to withhold this information.

§ 411.089(b)(1). The submitted FBI number constitutes CHRI generated by the FBI. Therefore, the district attorney's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

The remaining information contains fingerprints. Chapter 560 of the Government Code provides a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the district attorney's office must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

Some of the remaining information is excepted from disclosure under section 552.130 of the Government Code.⁴ Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Id. § 552.130. The district attorney's office must withhold the motor vehicle record information we have marked under section 552.130.

We conclude the following: the district attorney's office must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 411.083, 508.313, and 560.003 of the Government Code, (2) must withhold the information we have marked under section 552.130 of the Government Code, and (3) must

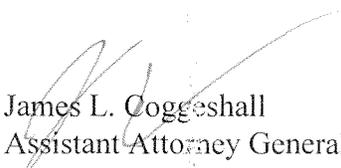
⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

provide the remaining information to the requestor, including the information we have marked for release.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 448661

Enc. Submitted documents

c: Requestor
(w/o enclosures)