



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2013

Ms. Michelle Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2013-09232

Dear Ms. Villarreal:

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# 489165 (ORR# LG-13-406).

The Waco Police Department (the "department") received a request for all police incident reports and crime scene photographs related to case number 05-10476. You state the department has released some of the requested information. You claim portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. This section encompasses information protected by other statutes, such as chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime

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).

Information Center. *See id.* § 411.083(a). 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 laws with respect to the CHRI it generates. *See id.* 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). 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 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find Federal Bureau of Investigation (“FBI”) number we have marked constitutes CHRI generated by the FBI. Accordingly, the department 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.

Some of the remaining information may be subject to section 552.1175 of the Government Code. Section 552.1175 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.

Id. § 552.1175(a)(1), (b). Some of the remaining information relates to an individual who was licensed as a peace officer of another law enforcement agency at the time the

information at issue was created. However, we are unable to determine from the information provided if the individual at issue is currently a licensed peace officer or if the marked information is the individual's home address. Thus, we must rule conditionally. Accordingly, to the extent the information at issue, which we have marked, consists of the home address of an individual who is currently licensed as a peace officer and who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the marked information under section 552.1175 of the Government Code. Conversely, if the individual whose information is at issue is not currently licensed as a peace officer, the information is not the individual's home address, or the individual does not elect to restrict access to his information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

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. *Id.* § 552.130(a)(1)-(2). Upon review, we find the information we have marked consists of motor vehicle record information. Therefore, the department must withhold the motor vehicle record information we have marked under section 552.130. However, we find you have not demonstrated how the remaining information you marked constitutes motor vehicle record information, and the department may not withhold any of the remaining information under section 552.130.

In summary, the department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the information we have marked under section 552.1175 of the Government Code, to the extent the marked information consists of the home address of an individual who is currently licensed as a peace officer and who elects to restrict access to the information in accordance with section 552.1175(b); and (3) the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.²

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,

²We note the information being released contains a social security number. 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. *See* Gov't Code § 552.147(b).

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 black ink, appearing to read "Ni A. Ybarra". The signature is fluid and cursive, with the first name "Ni" and last name "Ybarra" clearly distinguishable.

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 489165

Enc. Submitted documents

c: Requestor
(w/o enclosures)