



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2013

Ms. DeeAnna Looney
Legal Assistant
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2013-19124

Dear Ms. Looney:

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# 504603 (DPS PIR# 13-3278).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified accident. The department states it has provided some of the requested information to the requestor but claims some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the requested information relates to a pending criminal investigation. Based on this representation, we conclude the release of the information you have marked under section 552.108 would interfere with the detection, investigation, or prosecution of crime. *See 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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130(a) of the Government Code 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.

Gov't Code § 552.130(a). The submitted documents contain motor vehicle record information, which we have marked. Section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Accordingly, to the extent the motor vehicle information we have marked pertains to vehicles owned by living persons, the department must withhold it under section 552.130. However, the department may not withhold this marked information under section 552.130 if it pertains to a vehicle that is not owned by a living person. Further, we understand the requestor represents the estate of the deceased individual. If the requestor's client has an interest in the deceased individual's vehicle, then the requestor has a right of access to the motor vehicle record information pertaining to that vehicle, and the department may not withhold it under section 552.130. *See Gov't Code § 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). However, if a living individual other than the requestor's client has an interest in the vehicle, then the information we have marked pertaining to the deceased individual's vehicle must be withheld under section 552.130. Although you also seek to withhold a Federal Bureau of Investigation ("FBI") number in the remaining information under section 552.130, this information does not relate to motor vehicle record information or a personal identification document issued by a Texas agency or another state or country or a local agency authorized to issue an identification document. Therefore, the department may not withhold it on that ground.

However, section 552.101 of the Government Code is applicable to the FBI number.¹ Section 552.101 excepts from disclosure "information considered to be confidential by law,

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).*

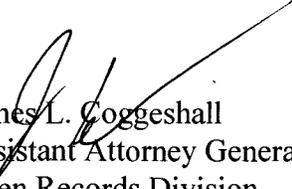
either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes, including chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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.* 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 criminal justice purposes. *See* Gov’t Code § 411.089(b)(1). The FBI number at issue constitute CHRI generated by the FBI. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

To conclude, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the motor vehicle record information we have marked under section 552.130 if it pertains to a vehicle that is owned by a living person; however, the department may not withhold this information if the requestor has a right of access to it pursuant to section 552.023 of the Government Code. 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. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 504603

Enc. Submitted documents

c: Requestor
(w/o enclosures)