

January 25 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

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Mr. Frank M. Crull  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR99-0231

Dear Mr. Crull:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 121240.

The Texas Department of Public Safety (the "department") received a request for "a copy of the video tape, audio recording, and written log," for a particular location during a specified time period. In response to the request, you submit to this office for review a copy of the records at issue. You state that the department has answered the requestor's questions "concerning the other information he has requested in his letter." You seek to withhold the submitted information pursuant to sections 552.103 and 552.108 of the Government Code. We have considered the exceptions and arguments you have raised and have reviewed the information at issue.

We note at the outset that the department received the open records request on October 6, 1998. You requested a decision from this office on October 22, 1998. Consequently, you failed to request a decision within the ten business days required by section 552.301(a) of the Government Code. Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to timely request a decision after receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.]

1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See Hancock*, 797 S.W.2d at 381.

Because you have not presented this office with compelling reasons for withholding the requested information pursuant to sections 552.103 or 552.108, we deem these exceptions to disclosure as being waived.<sup>1</sup> However, when an exception to disclosure that is designed to protect the interests of a third party is applicable, the presumption of openness may be overcome. *See* Open Records Decision No. 552 (1990). Although you have not raised any other applicable exception, based on the records at issue, we must consider whether some of the submitted information should be excepted from required public disclosure under sections 552.101, 552.119, and 552.130 of the Government Code.<sup>2</sup> Therefore, we will next address the applicability of exceptions that prohibit the release of confidential information. *See* Gov't Code § 552.352. All of the requested information not specifically addressed below must be released to the requestor in its entirety.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. If the information submitted for our review contains criminal history record information ("CHRI") that is generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC") it must not be publicly released. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose, Gov't Code § 411.089(b)(1). 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. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code

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<sup>1</sup>Generally, sections 552.103 and 552.108 do not provide a compelling demonstration to overcome the presumption of openness. *See* Open Records Decision Nos. 586 (1991), 551 (1990), 473 (1987), 470 (1987).

<sup>2</sup>The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. *See generally* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

chapter 411, subchapter F. Therefore, any CHRI that falls within the ambit of these state and federal regulations must be withheld from the requestor.

We next advise the department that if the officer depicted in the submitted video tape can be identified, then section 552.119 is implicated. Section 552.119 of the Government Code excepts from public disclosure a photograph that depicts a peace officer as defined by article 2.12, Code of Criminal Procedure, unless certain conditions for disclosure exist, or the peace officer gives written consent to the disclosure. Therefore, if the police officer in the videotape can be identified, the image on the videotape must be withheld from public disclosure, while the remaining portion of the videotape should be released.

Finally, we must consider whether some of the requested information must be withheld pursuant to section 552.130 of the Government Code. Section 552.130 to the Open Records Act governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement 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;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. Section 552.130 provides that information is excepted from disclosure if it relates to a motor vehicle title or registration issued by a state agency. This type of information may be released only as provided under chapter 730 of the Transportation Code. We have marked the type of information which must be withheld pursuant to section 552.130. The remaining information must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID # 121240

Enclosures: Submitted documents, audio and video tapes

cc: Mr. Frederick C. Shelton  
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(w/o enclosures)