



March 13, 2001

Ms. Cathy S. Compton  
Assistant District Attorney  
Hays County  
110 East Martin Luther King  
San Marcos, Texas 78666

OR2001-0985

Dear Ms. Compton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144916.

The Hays County Sheriff's Office and the Hays County District Attorney's Office (the "sheriff" and the "DA," respectively) each received a written request for records pertaining to the arrest of a named individual. The sheriff received a request for the individual's "Arrest Report," while the DA received a request for the "cover sheet" of the arrest report. You state that you have released to the requestor the one-page document titled "Arrest Report." You contend that other documents you have submitted to this office, which you represent as being responsive to the request, are excepted from public disclosure pursuant to section 552.108 of the Government Code.

We note at the outset that some of the information at issue is deemed confidential by law and therefore must be withheld from the public. Among the documents at issue is criminal history record information ("CHRI"). 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 chapter 411, subchapter F. The sheriff and DA therefore must withhold the CHRI contained in the records at issue.

The records at issue also contain the arrestee's social security number. This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. However, this office has no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is therefore confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I). We therefore conclude that this number must be released.<sup>1</sup>

The records at issue contain the arrestee's driver's license number. Section 552.130(a)(1) of the Government Code requires the withholding of "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, you must withhold the Texas driver's license number pursuant to section 552.130(a)(1) of the Government Code.

Finally, we address the applicability of the exception you raised, section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure information pertaining to pending criminal investigations and prosecutions where release of the information would "interfere with the detection, investigation, or prosecution of crime." Based on your representation that the requested information pertains to a pending criminal prosecution, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(1) in this instance. However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Basic information includes both booking and bonding information. Open Records Decision No. 127 at 3 (1976). Accordingly, the booking and bonding information you submitted to this office may not be withheld pursuant to section 552.108 and therefore must be released, except as discussed above.

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<sup>1</sup>We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, you should ensure that these numbers were not obtained nor are maintained pursuant to any provision of law, enacted on or after October 1, 1990.

We also note that among the records at issue are several *capias* documents issued for the criminal defendant that may be subject to section 552.022 of the Government Code. Section 552.022(a) of the Government Code provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(17) information that is also contained in a public court record.

It is not clear to this office, however, whether the *capias* documents you submitted to this office have been filed with the court. If these documents have been filed with the court, they must be released to the requestor pursuant to section 552.022(a)(17). Otherwise, the sheriff and DA may withhold the *capias* documents, as well as the other requested information except as discussed above, pursuant to section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/RWP/seg

Ref: ID# 144916

Encl. Submitted documents

cc: Mr. Murlin Evans  
San Marcos Daily Record  
P.O. Box 1109  
San Marcos, Texas 78666  
(w/o enclosures)