



August 2, 2002

Mr. Jaime Esparza
District Attorney
34th Judicial District
500 East San Antonio Avenue, Room 201
El Paso, Texas 79901

OR2002-4255

Dear Mr. Esparza:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166642.

The District Attorney for the 34th Judicial District (the “district attorney”) received a request for the criminal records of a deceased person. You state that you have released some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that is made confidential by other statutes. Criminal history record information (“CHRI”) obtained from the National Crime Information Center (“NCIC”) or the Texas Crime Information Center (“TCIC”) is confidential under federal law and subchapter F of chapter 411 of the Government Code. Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12. 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 CHRI except to another criminal justice agency for a criminal justice purpose. See Gov't Code § 411.089(b). Any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Any CHRI obtained from the Texas Department of Public Safety (the "DPS") or another criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code. Furthermore, when a law enforcement agency compiles a living individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (common-law privacy protects highly intimate or embarrassing information, such that its release would be highly objectionable to person of ordinary sensibilities, that is not matter of legitimate public interest); Open Records Decision No. 616 at 2-3 (1993).

Thus, any responsive criminal history information that is confidential under section 20.21 of title 28 of the Code of Federal Regulations or subchapter F of chapter 411 of the Government Code, or that is protected by privacy under *Reporters Committee*, must be withheld from disclosure under section 552.101 of the Government Code. We note, however, that the CII, CJIS, DPS, and FBI numbers that the district attorney has marked for withholding are not confidential under the federal law or chapter 411 of the Government Code. Furthermore, this information relates to a person who is deceased and thus is not private under *Reporters Committee*. See Open Records Decision No. 272 at 1 (1981) (privacy is personal right that lapses at death). Therefore, the district attorney may not withhold the marked CII, CJIS, DPS, and FBI numbers under section 552.101.

The social security number of a living person may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 at 2-4 (1994). The documents at Tabs D and E contain a social security number that may be confidential under section 405(c)(2)(C)(viii)(I). However, the district attorney has cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the district attorney to obtain or maintain a social security number. Thus, we have no basis for concluding that the social security number in question was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution the district attorney, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the district attorney should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

The district attorney also raises section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). The district attorney states that the submitted information at Tabs F and G relates to cases that were dismissed. Based on this representation and our review of the information at Tabs F and G, we find that section 552.108(a)(2) is applicable to that information.

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The district attorney must release basic information under section 552.108(c), including a detailed description of the offense, with respect to the cases that are the subject of the information at Tabs F and G. *See Houston Chronicle*, 531 S.W.2d at 186-187; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district attorney may withhold the rest of the information at Tabs F and G under section 552.108(a)(2).

Lastly, we address the district attorney’s claim under section 552.130 of the Government Code. This exception provides in part:

(a) Information is excepted from [required public disclosure] 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]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov’t Code § 552.130(a)(1)-(2). Section 552.130 is applicable to Texas driver’s license, license plate, and vehicle identification numbers. This exception protects the privacy interests of the persons to whom the information pertains. *See* Transp. Code § 730.002 (purpose of Motor Vehicle Records Disclosure Act is to protect individual’s personal privacy by prohibiting disclosure and use of personal information in motor vehicle records). The district attorney raises section 552.130 with regard to the driver’s license number of a

deceased person. As privacy is a personal right that lapses at death, the district attorney may not withhold this driver's license number under section 552.130. We note, however, that the documents at Tab C contain a Texas license plate number, which we have marked. The district attorney must withhold the Texas license plate number under section 552.130(a)(2) if it pertains to a motor vehicle in which a living person has an interest. If not, then the license plate number must also be released.

In summary, criminal history information that is confidential under section 20.21 of title 28 of the Code of Federal Regulations or subchapter F of chapter 411 of the Government Code, or that is protected by privacy under *Reporters Committee*, must be withheld from disclosure under section 552.101 of the Government Code. A living person's social security number may be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The district attorney may withhold the information at Tabs F and G under section 552.108(a)(2) of the Government Code, with the exception of the basic information that must be released under section 552.108(c). The Texas license plate number is excepted from disclosure under section 552.130(a)(2) of the Government Code if it pertains to a vehicle in which a living person has an interest. The rest of the requested information must be released.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 166642

Enc: Marked documents

c: Mr. James F. Scherr
Scherr Legate & Ehrlich
109 North Oregon, 12th Floor
El Paso, Texas 79901
(w/o enclosures)