



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 10, 2003

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2003-0900

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176178.

The Texas Department of Public Safety (the "DPS") received a request for the video tapes and radio logs from "the units that were in service from 2:00 pm to 3:00 am on the 7-14-02 in Texas City, Texas." You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. In the alternative, you claim that the DPS may withhold some of the responsive information pursuant to a previous determination issued by this office in Open Records Letter 01-2047 (2001). *See* Open Records Decision No. 673 (2001) (previous determinations generally). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a) 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." Generally, a governmental body claiming section 552.108 must reasonably

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted responsive information, which consists of activity logs and a patrol car video tape documenting numerous traffic stops made by two officers, reflects "the activities of DPS Highway Patrol officers in the League City area from the afternoon of July 14, 2002 in to the early morning hours of July 15, 2002." You also state that "as a result of a complaint regarding a traffic stop made in that area during that time, a criminal case has been filed against one of the officers on duty." However, you have not adequately demonstrated how any specific portion of the submitted information relates to the criminal investigation. Thus, you have failed to demonstrate how the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. Accordingly, we find that you have not established the applicability of section 552.108(a)(1) to the responsive information.

You also argue that you may withhold some of the submitted information that you have marked pursuant to a previous determination issued by this office in Open Records Letter 01-2047 (2001), which authorizes the DPS to withhold criminal history record information ("CHRI") as defined in section 411.082 of the Government Code and as maintained by the DPS under section 411.083 of the Government Code in conjunction with section 552.101 of the Government Code and to withhold Texas driver's license numbers, Texas license plate numbers, Texas vehicle identification numbers, and entire copies of Texas driver's licenses under section 552.130 of the Government Code.

Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. 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.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the 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. 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. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be

withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

Section 411.082 of the Government Code defines CHRI as:

(2) . . . information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. The term does not include:

(A) identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or

(B) driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.

Gov't Code 411.082(2).

None of the submitted information is CHRI generated by TCIC and NCIC. Accordingly, you may not withhold any of the submitted information pursuant to section 552.101 in conjunction with section 411.083.

Section 552.130 provides in relevant part:

(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; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We note that section 552.130 applies only to Texas motor vehicle information. You must therefore withhold the Texas driver's license numbers, driver's license expiration dates, vehicle identification numbers, and license plate numbers, which we have marked, under section 552.130. You may not withhold the out-of-state driver's license number, license plate number, or vehicle identification numbers under section 552.130, nor may you withhold names, dates of birth, or social security numbers under section 552.130.

We note that the submitted information contains a social security number. Social security numbers may be withheld in some circumstances under section 552.101 of the Government

Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the DPS pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, you must withhold the Texas driver's license numbers, driver's license expiration dates, vehicle identification numbers, and license plate numbers, which we have marked, under section 552.130. You may need to withhold the included social security number under the federal Social Security Act. You must release the remaining responsive information.

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

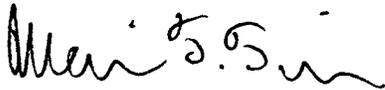
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 176178

Enc: Submitted documents

c: Mr. Charles Domingue
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League City, Texas 77573
(w/o enclosures)