



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 9, 2004

Chief Don Hatcher  
City of Leander Police Department  
P.O. Box 319  
Leander, Texas 78646-0319

OR2004-9580

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212652.

The Leander Police Department (the "department") received a request for a particular police report. You inform us that you have released some information but claim that the remaining information in the police report is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

Gov't Code § 552.108. A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this case, you do not state that the submitted information relates to a pending criminal investigation. Furthermore, you have not otherwise explained how release of the submitted information would interfere with "the detection, investigation, or prosecution of crime."

Thus, we find you have failed to establish that section 552.108 is applicable to the submitted information. We therefore determine that the department may not withhold any portion of the submitted information pursuant to section 552.108 of the Government Code.

We note that some of the submitted information is subject to section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> This section encompasses information protected by other statutes including those governing the release of criminal history record information ("CHRI"). See Gov't Code § 411.082(2) (CHRI means information collected about a person and does not include driving 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. We have marked the information that must be withheld pursuant to section 552.101 in conjunction with chapter 411 of the Government Code. The remaining information must be released to this requestor.<sup>2</sup>

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note that the submitted documents contain information about the requestor that is confidential and not subject to release to the general public. See Gov't Code § 552.352. However, as the individual at issue, the requestor has a special right of access to this information. See Gov't Code § 552.023(b) (governmental body may not deny access to person whom information relates or that person's representative on grounds that information is considered confidential under privacy principles). In the event the department receives another request for this information from someone other than this requestor, the department must ask this office for a decision whether the information is subject to public disclosure.

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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "L. Joseph James". The signature is written in a cursive style with a horizontal line extending to the right.

L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 212652

Enc. Submitted documents

c: Ms. Sandy Winkley  
720 Northcreek Boulevard  
Leander, Texas 78641  
(w/o enclosures)