



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 1, 2005

Mr. Lou Bright  
General Counsel  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR2005-01770

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219599.

The Texas Alcoholic Beverage Commission (the "commission") received three requests for information relating to an investigation of The Cedars Bar and Grill. You seek to withhold some of the requested information under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the submitted information includes an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for the release of an accident report to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See* Act of May 25, 2001, 77<sup>th</sup> Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282. Under this provision, the Texas Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the three items of information specified by the statute. *Id.* You inform us that each of the requestors provided the commission with two of

the three required items of information. Therefore, the accident report must be released in its entirety under section 550.065(b) of the Transportation Code. *See also* Open Records Decision No. 623 at 3 (1994) (exceptions to public disclosure under Act generally not applicable to information that another statute expressly makes public).

Next, we address section 552.101. This section excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information that other statutes make confidential. Criminal history record information obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. Criminal history record information (“CHRI”) means “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.”<sup>1</sup> Gov’t Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center 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 id.* at 10-12; *see generally* Gov’t Code ch. 411 subch. F. 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).<sup>2</sup>

Thus, CHRI obtained from the DPS or another criminal justice agency is confidential under section 552.101 of the Government Code in conjunction with the federal law and subchapter F of chapter 411 of the Government Code. Furthermore, information compiled by a law enforcement agency that relates to a specific individual as a criminal suspect, arrestee, or defendant must be withheld from the public under section 552.101 in conjunction with common-law privacy, because 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.<sup>3</sup> *See U.S. Dep’t of Justice v. Reporters Comm. for Freedom of*

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<sup>1</sup>We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety (the “DPS”) under subchapter C of chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2) (defining “criminal history record information”).

<sup>2</sup>We note that section 411.091 of the Government Code authorizes the commission to obtain CHRI.

<sup>3</sup>Section 552.101 also encompasses the common-law right to privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

*the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993). We have marked criminal history information that the commission must withhold under section 552.101 of the Government Code in conjunction with federal law, subchapter F of chapter 411 of the Government Code, and privacy under *Reporters Committee*.

Section 552.101 also encompasses section 58.001 of the Occupations Code.<sup>4</sup> This section provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 58.001. You assert that social security numbers contained in the submitted documents are confidential under section 58.001. To the extent that the social security numbers in question are those of an applicant for or a holder of a license, certificate of registration, or other legal authorization issued by commission, we agree that they are confidential under section 58.001 of the Occupations Code and must be withheld from disclosure under section 552.101 of the Government Code. We may marked an additional social security number that the commission may also be required to withhold on this basis.

We also note that a social security number is confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act if it was obtained or is maintained by a governmental body under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). To the extent that section 58.001 of the Occupations Code is not applicable to any social security number contained in the submitted documents, we have no basis for a conclusion that such a social security number is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. Nevertheless, the Act imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the commission should ensure that it was not obtained and is not maintained by the commission under any provision of law enacted on or after October 1, 1990.

You also raise section 552.130. This section excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Section 552.130(a)(1) is applicable to Texas driver's license information. Furthermore, section 552.130 protects privacy interests. Privacy is a purely personal right that lapses at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*,

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<sup>4</sup>The Seventy-eighth Legislature renumbered former section 56.001 of the Occupations Code as section 58.001. *See* Act of June 21, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Sess. Law Serv. 4146.

589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Thus, the Texas driver's license numbers of living individuals that you have marked must be withheld under section 552.130. However, the commission may not withhold the marked Texas driver's license numbers of deceased individuals under this exception.

Lastly, we address your claim under section 552.136. This exception is applicable to certain account numbers and other access devices and provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Section 552.136 also protects privacy interests. In this instance, the credit card account number that you have marked for withholding belonged to an individual who is deceased. Therefore, unless the marked account number relates to an account in which a living person has an interest, it is not excepted from disclosure under section 552.136. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981).

In summary: (1) the accident report must be released in its entirety under section 550.065(b) of the Transportation Code; (2) the commission must withhold the criminal history information under section 552.101 in conjunction with federal law, subchapter F of chapter 411 of the Government Code, and common-law privacy under *Reporters Committee*; (3) the social security number of an applicant for or a holder of a license, certificate of registration, or other legal authorization issued by the commission must be withheld under section 552.101 in conjunction with section 58.001 of the Occupations Code; (4) the commission may also be required to withhold a social security number under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; (5) Texas

driver's license numbers of living individuals must be withheld under section 552.130; and (6) the credit card account number must be withheld under section 552.136 if it relates to an account in which a living person has an interest. The rest of the submitted 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).

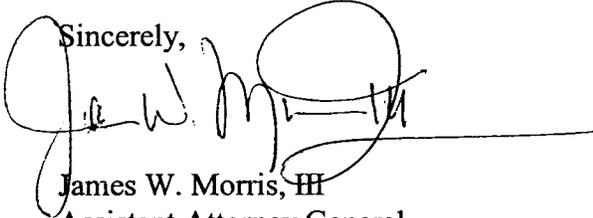
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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,



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

JWM/sdk

Ref: ID# 219599

Enc: Submitted documents

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