



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2006

Mr. John P. Dodson
County Attorney
Uvalde County
318 Nopal Street
Uvalde, Texas 78801

OR2006-02930

Dear Mr. Dodson:

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# 244765.

The Uvalde County Attorney's Office (the "office") received a request for all documents pertaining to a specific case number, which concerns a complaint filed by the requestor. You inform us that you have made some of the responsive information available to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that 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. 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 agree that some of the information at issue, which we have marked, is excepted from required public disclosure by section 552.101 of the Government Code. We note, however, that DPS has the authority to release an individual's own CHRI to that individual. Gov't Code § 411.083(b)(3).

Additionally, you argue that some of this information is excepted under section 552.101 of the Government Code in conjunction with common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Although you indicate that the remaining information contains criminal history information that is confidential under section 552.101 of the Government Code in conjunction with common law privacy, upon review we find that none of the submitted information constitutes criminal history for the purposes of common law privacy, and thus none of it may be withheld on that basis.

You assert that Exhibits A through H should be withheld under section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) 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;

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except [from public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Section 552.108 is applicable to certain specific types of law enforcement information. Sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded case that did not result in a conviction or a deferred adjudication. Section 552.108(a)(4) is applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state.

Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108, .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits B through H are excepted from disclosure under section 552.108(a)(2) as this information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. On that basis, we conclude section 552.108(a)(2) is applicable to this information. Furthermore, you state that Exhibit A was prepared by a prosecutor in anticipation of litigation or in the course of preparing for litigation and we understand you to assert that this information reflects the prosecutor's mental impressions or legal reasoning. Accordingly, we conclude that section 552.108(a)(4) is applicable to this information.

However, 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). Basic information refers to the 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibits B through H from disclosure based on section 552.108(a)(2) of the Government Code and you may withhold Exhibit A under section 552.108(a)(4) of the Government Code.

We note that the remaining information includes Texas motor vehicle record information that is excepted under section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information that “relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov't Code § 552.130(a)(1), (2). In accordance with section 552.130, the office must withhold the Texas motor vehicle record information that we have marked.

In summary, the office must withhold the information we have marked under section 552.101 in conjunction with chapter 411. The office must also withhold the Texas motor vehicle information we have marked under section 552.130. With the exception of basic information, the office may withhold Exhibits B through H from disclosure based on section 552.108(a)(2) of the Government Code and the office may withhold Exhibit A under section 552.108(a)(4) of the Government Code. The remaining submitted information must be released.²

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

¹ The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

² The information being released includes the requestor’s driver’s license number. The requestor has a right of access to his Texas motor vehicle record information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). However, if the office receives another request for this particular information from a different requestor, the office should again seek a decision.

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).

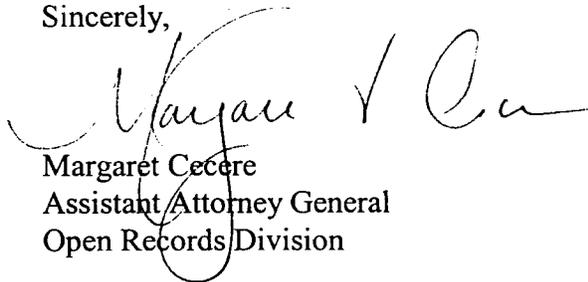
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Margaret Cecere
Assistant Attorney General
Open Records Division

MC/sdk

Ref: ID# 244765

Enc. Submitted documents

c: Mr. Juan O. Sanchez & Mr. Joe Suarez
La Voz de Uvalde County
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(w/o enclosures)