



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2006

Mr. James M. Frazier
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2006-07336

Dear Mr. Frazier:

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# 254019.

The Texas Department of Criminal Justice (the "department") received a request for the requestor's application for employment with the department. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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

¹To the extent any additional responsive information existed on the date the department received this request, we assume the department has released it. If the department has not released any such records, it must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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.* §§ 411.090-411.127. 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). We note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See* Gov't Code § 411.082(2)(B) (definition of CHRI does not include driving record information). We have marked CHRI in the submitted documents that must be withheld by the department under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F of the Government Code.²

You also ask this office to determine whether portions of the remaining submitted information, including the requestor's social security number and motor vehicle record information, must be released to her. You do not assert, however, that any portion of the remaining submitted information is confidential by law, and we are unaware of any law that would prohibit the release of this information in this instance. As you raise no further exceptions to disclosure, the remaining submitted information must be released. *See* Gov't Code §§ 552.023 (person has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interests), .301(b) (governmental body required to state exceptions to release that apply to the requested information).

In summary, the department must withhold the CHRI we have marked pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal regulations. The remaining information must be released.³

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

² We note that the requestor can obtain her own CHRI from DPS. Gov't Code § 411.083(b)(3).

³ Should the department receive another request for the records at issue from a requestor who would not have a right of access to the private information contained in these records, the department should resubmit these same records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

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, 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Ms. Barbara Stevens
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Sweetwater, Texas 79556
(w/o enclosures)