



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2007

Mr. Mike Stafford
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2007-14459

Dear Mr. Stafford:

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# 294294.

Harris County Facilities and Property Management (the "county") received a request for a copy of all documents, files and records that were reviewed by the county when deciding whether to grant the requestor a bypass badge. You state that you have released a portion of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 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. Section 552.101 encompasses information protected by other statutes. The public availability of fingerprints is governed by chapter 560 of the Government Code. *See id.* §§ 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), 560.003 (biometric identifier in possession of governmental body is exempt from disclosure under Act). Section 560.002 provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Therefore, as the individual whose fingerprints are contained in the submitted documents, the requestor has a right of access to that information under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual

requests information concerning himself). Therefore, the county must release the submitted fingerprints under section 560.002 of the Government Code.

Next, you claim that a portion of the submitted information is excepted from disclosure under chapter 411 of the Government Code. Section 552.101 also encompasses chapter 411. Chapter 411 deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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.” Gov’t Code § 411.082(2). 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. Although you indicate that the submitted material contains criminal history record information that is confidential under chapter 411, upon review we find that none of the submitted information constitutes CHRI for the purposes of chapter 411. Therefore, the county may not withhold any portion of the submitted information on that basis under section 552.101 of the Government Code.

Section 552.130 of the Government Code 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 or a motor vehicle title or registration issued by an agency of this state. *See id.* § 552.130(a)(1)-(2). We note that this provision only applies to motor vehicle record information issued by the State of Texas, and not other states. We also note that section 552.130 protects personal privacy. The information you have marked contains a driver’s license number issued by another state. Further, the requestor is one of the individuals to whom the marked Texas motor vehicle record information pertains. As such, the requestor has a right of access to his Texas motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, the county must release the requestor’s Texas motor vehicle record information and the out of state driver’s license number.¹ The remaining information at issue is Texas motor vehicle record information of individuals who are not the requestor. Therefore, the county must withhold this information, which we have marked, under section 552.130.

¹Some of the information that is subject to release is confidential information that is not subject to release to the general public. *See* Gov’t Code § 552.352. However, the requestor in this instance has a special right of access to the information. *Id.* § 552.023. Because some of the information is confidential with respect to the general public, if the county receives a future request for this information from an individual other than the requestor, the county should again seek our decision.

Lastly, you claim that the remaining submitted information contains social security numbers that are excepted from disclosure under section 552.147 of the Government Code. Section 552.147 provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). We note, however, that the requestor has a right of access to his own social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles). Accordingly, the county may withhold the social security numbers we have marked that belong to individuals other than the requestor under section 552.147 of the Government Code.

In summary, the county must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The county may withhold the social security numbers we have marked under section 552.147. The remaining 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).

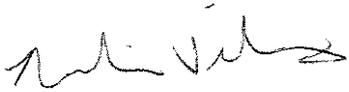
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read 'Melanie J. Villars', written in a cursive style.

Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 294294

Enc. Submitted documents

c: Mr. Lloyd E. Kelley
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(w/o enclosures)