



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 7, 2008

Mr. Jason Day
City Attorney
City of Royse City
P.O. Box 638
Royse City, Texas 75189

OR2008-15379

Dear Mr. Day:

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# 328012.

The City of Royse City (the "city") received a request for a specified police report. You state that you have released some of the information to the requestor. You state that you are redacting social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a breath test result of an individual's blood alcohol content. Full information concerning the analysis of the specimen must be made available upon the request of the person who has given a specimen at the request of a peace officer. Transp. Code § 724.018. We note that the requestor may be the spouse of the individual whose blood alcohol content is at issue. Thus, if the requestor is the authorized representative of the individual at issue, the city must release the blood alcohol test results to this requestor. To the extent this requestor is not the individual's authorized representative, we will consider your arguments against the disclosure of this information, as well as the remaining submitted information.

Next, we note that the submitted information contains a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. However, the requestor may have a right of access to the submitted social security number. *See generally* Gov't Code § 552.023.

(officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation 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 pieces of information specified by the statute. *Id.* The requestor has provided the city with two of the required pieces of information pursuant to section 550.065(c)(4). Thus, the city must release the CR-3 accident report form, which we have marked, in its entirety under this section.

We now turn to your arguments for the remaining submitted information. Section 552.101 of the Government Code exempts 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 criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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 Texas 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 the 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. The city must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The remaining information you have marked does not constitute CHRI for the purposes of chapter 411 and may not be withheld on that basis.

Next, we note that you have marked the submitted DVD as confidential. However, you have cited no law under which the submitted DVD is considered to be confidential for purposes of section 552.101 of the Government Code. Therefore, the city may not withhold the submitted DVD under section 552.101 of the Government Code.

Section 552.108(a) exempts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked

relates to a pending criminal investigation. Based on this representation, we conclude that release of this information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The city must generally withhold the motor vehicle record information you have marked within the remaining information under section 552.130 of the Government Code. However, we note that the requestor may be the authorized representative of an individual whose motor vehicle record information is at issue. Thus, the requestor may have a special right of access to this information. 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). Section 552.023(a) provides that “[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.” See Gov't Code § 552.023(a). Thus, to the extent the requestor is the authorized representative of an individual whose information is at issue, the city must release this information to the requestor. To the extent the requestor is not the authorized representative of an individual whose information is at issue, the city must withhold this information under section 552.130 of the Government Code.

In summary: (1) if the requestor is the authorized representative of the individual at issue, the city must release the blood alcohol test results under section 724.018 of the Transportation Code; (2) the city must release the CR-3 accident report form we have marked in its entirety pursuant to section 550.065(c)(4) of the Transportation Code; (3) the city must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; (4) the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code; and (5) to the extent the requestor is not the authorized representative of an individual whose information is at issue, the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Bill Dobie
Assistant Attorney General
Open Records Division

WJD/ma

Ref: ID# 328012

Enc. Submitted documents

c: Ms. Sandra Brummet
3213 CR 2502
Caddo Mills, Texas 75135
(w/o enclosures)