



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 12, 2009

Ms. M. Ann Montgomery  
Assistant Ellis County and District Attorney  
1201 North Highway 77, Suite 104  
Waxahachie, Texas 75165-7832

OR2009-01843

Dear Ms. Montgomery:

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# 335085.

The Waxahachie Police Department (the "department") received a request for information pertaining to a specified incident. You state that some information has been made available to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the

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<sup>1</sup>Although you raise section 552.103 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. See Gov't Code §§ 552.301, .302.

release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked portions of the submitted information that the department seeks to withhold under section 552.108, and you state that the marked information is related to a pending criminal investigation and prosecution. Based on your representation, we conclude the release of the information at issue 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the marked information under section 552.108(a)(1).

We note that a portion of the remaining information is subject to section 552.101 of the Government Code.<sup>2</sup> 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. This section encompasses information protected by chapter 411 of the Government Code, which 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.” *Id.* § 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. *See Open Records Decision No. 565* (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Texas 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. *See 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. A portion of the remaining information is CHRI that falls within the scope of chapter 411. Accordingly, the department must withhold this

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily not raise other exceptions. *Open Records Decision Nos. 481* (1987), *480* (1987), *470* (1987).

information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.<sup>3</sup>

You have marked portions of the remaining information you contend are protected from disclosure under section 552.130 of the Government Code, which 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. Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver's license numbers you have marked under section 552.130 of the Government Code.

Finally, you raise section 552.147 of the Government Code for portions of the remaining information, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>4</sup> *Id.* § 552.147. We agree that the department may withhold the social security numbers that you have marked under section 552.147.<sup>5</sup>

In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code and (2) the information you have marked under section 552.130 of the Government Code. Finally, the department may withhold the marked social security numbers under section 552.147 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

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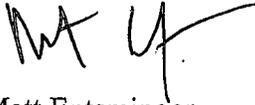
<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>4</sup>We understand the department to raise section 552.147 of the Government Code, though the information at issue has been mistakenly marked under section "552.145."

<sup>5</sup>We note that section 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.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Entsminger', with a stylized flourish at the end.

Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/eb

Ref: ID# 335085

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)