



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 13, 2009

Ms. P. Armstrong  
Assistant City Attorney  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2009-01963

Dear Ms. Armstrong:

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# 333702 (Open Records Request: 2008-7826).

The Dallas Police Department (the "department") received a request for the internal affairs investigation regarding a named officer. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).<sup>1</sup>

As a preliminary matter, the requestor argues the department failed to comply with the ten-business-day deadline prescribed by section 552.301(b) of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply no later than the tenth business day after the date of

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

receiving the written request. *Id.* § 552.301(b). The department received the request on November 5, 2008. The department submitted its request for an open records decision to this office via facsimile on November 19, 2008; therefore, we find the department complied with the procedural requirements of the Act.

Next, the requestor argues the department has previously disclosed the requested information to the requestor's client and may not now withhold the information under section 552.108 of the Government Code, a discretionary exception. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). In this instance, we find there has not been a voluntary release of the information at issue for purposes of section 552.007.

The requestor also argues his client has a right of access to his own personnel file. We note that section 552.023 provides that a person or a person's authorized representative has a right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *Gov't Code* § 552.023. Here, the department asserts portions of the submitted information are subject to sections 552.101, 552.108, 552.130, and 552.136. A requestor does not have a right of access under section 552.023 to information that is protected from public disclosure by a law that is not based exclusively on the requestor's privacy interests. *See, e.g.,* Open Records Decision Nos. 603 at 2-3 (1992) (no section 552.023 right of access to information encompassed by Health & Safety Code § 142.009, which protects integrity of investigatory process as well as individual's privacy interests), 587 at 3-4 (1990) (no right of access to information protected by former Fam. Code § 34.08, which protected law enforcement interests). The requestor generally has a right of access to his client's information that is subject to sections 552.130 and 552.136 because these exceptions protect privacy interests. However, the requestor does not have a right of access to information pertaining to other individuals that is subject to sections 552.130 and 552.136. Further, section 552.108 protects law enforcement interests, not privacy interests and section 552.101 in conjunction with section 550.065 of the Transportation Code also does not protect privacy interests. The requestor also claims he has a right of access to this information pursuant to *Greene v. McElroy*, 360 U.S. 474, (1959). We note *Greene* does not give the requestor or his client a right of access to this information. Further, it is beyond the scope of the Act to determine an individual's due process right of access. Accordingly, the requestor does not have a right of access to the entirety of the submitted information.

We note the submitted information includes an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See Transp. Code* § 550.064 (officer's accident report). Section 550.065(b) states 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.<sup>2</sup> *Id.* In this instance, the requestor has not provided the department with at least two of the three items of information specified by section 550.065(c)(4). Therefore, the department must withhold the submitted accident report you have marked pursuant to section 550.065(b) of the Transportation Code.

We will now address your argument under section 552.108 of the Government Code. Section 552.108(a)(1) excepts 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). Generally, 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.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the submitted information is related to an internal affairs investigation. Section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to Gov’t Code § 552.108). You state, however, the internal affairs investigation is related to a pending criminal prosecution. Based on your representations and our review, we conclude the release of the information you have marked 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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1).

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 exception encompasses information another statute makes confidential. Section 552.101 encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”), which 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

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<sup>2</sup>Transp. Code § 550.0601 (“department” means Texas Department of Transportation).

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 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. Thus, 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). We find a portion of the remaining records is CHRI generated by TCIC or NCIC. Accordingly, the department must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.130 provides 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. *Id.* § 552.130(a)(1), (2). We agree the Texas license plate and driver’s license information you have marked, as well as the information we have marked, must be withheld under section 552.130.

Section 552.136(b) states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). We understand an employee’s identification number is also used as an employee’s credit union bank account number. Thus, the department must withhold the information you have marked under section 552.136 of the Government Code.

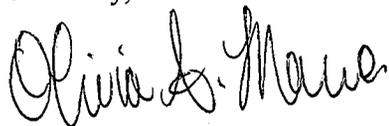
In summary, the department must withhold the submitted accident report under section 550.065 of the Transportation Code. The department may withhold the information you have marked under section 552.108(a)(1). The department must withhold the CHRI we have marked under section 411.083 in conjunction with section 552.101, the marked Texas

license plate and driver's license information under section 552.130, and the employee identification numbers under section 552.136.<sup>3</sup> The remaining information must be released.<sup>4</sup>

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

Sincerely,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/cc

Ref: ID# 333702

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>3</sup>We note that the submitted information contains a social security number. 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.

<sup>4</sup>We note some of the information being released is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department should again seek our decision.