



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 14, 2009

Mr. David H. Guerra
King, Guerra, Davis & Garcia
P.O. Box 1025
Mission, Texas 78573

OR2009-04870

Dear Mr. Guerra:

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# 339808.

The Mission Police Department (the "department"), which you represent, received four requests from the same requestor for information pertaining to a specified incident involving two named individuals. You claim that the submitted police report and accompanying information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested third party may submit comments stating why requested information should or should not be released).

Initially, both you and the requestor acknowledge, and we agree, that you failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider the department's claim under this exception.

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 that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007 provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B, D, and E.

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). The submitted police report and accompanying information involves juvenile criminal conduct occurring after September 1, 1997; therefore, we agree that the information at issue is generally confidential under section 58.007(c). However, the requestor has provided this office with documentation showing that he is the authorized representative of the only juvenile arrestee listed in the submitted information. Pursuant to section 58.007(e), the department may not withhold the submitted juvenile records from this requestor under section 58.007(c) in conjunction with section 552.101 of the Government Code. *Id.* § 58.007(e). We note, however, that the submitted police report contains criminal history record information ("CHRI") and Texas motor vehicle record information. Section 58.007(j) provides that information subject to any other exception to disclosure under the Act or other law must be redacted when releasing information under section 58.007(e). *See id.* § 58.007(j)(2). We will therefore address the applicability of sections 411.083 and 552.130 of the Government Code to the information at issue.¹

Section 552.101 encompasses 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. Accordingly, the department must withhold the CHRI we have marked pursuant to section 552.101 in conjunction with section 411.083 of the Government Code and federal law.²

Section 552.130 of the Government Code 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 [or] a motor vehicle title or registration issued by an agency of this state." *Gov't Code* § 552.130. Accordingly, the department must withhold the Texas-issued driver's license and Texas motor vehicle record information we marked under section 552.130.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note that the requestor can obtain his client's own CHRI from DPS. *See Gov't Code* § 411.083(b)(3).

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must also withhold the information we marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.³

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, 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 339808

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that, because the information being released is confidential with regard 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. We also note that the information being released contains a social security number of an individual who is not the requestor's client. 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.