



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2009

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2009-07306

Dear Ms. Smith:

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# 348813 (ORA 09-0854).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified arrest. You state that some of the requested information has been released. You claim that the remaining requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked the information for which the department claims section 552.108. You state that the

¹Although you do not specifically raise section 552.130 of the Government Code, you have marked parts of the submitted documents that the department seeks to withhold under this exception. Therefore, we will address section 552.130, which is a mandatory exception to disclosure that may not be waived. *See Gov't Code* §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

marked information is related to a pending criminal case. Based on your representation, we find that section 552.108(a)(1) is applicable in this instance. *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). We therefore conclude that the department may withhold the marked information 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). Accordingly, the Texas motor vehicle record information you have marked must be withheld under section 552.130 of the Government Code.

Next, we note a portion of the remaining information is excepted from disclosure pursuant to section 552.101 of the Government Code.² 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 exception 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." 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. *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 department maintains, except that the department 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 the department 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 the department 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. Upon review, we find a portion of the submitted information constitutes CHRI generated by

²The 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).

FBI. We have marked the information the department must withhold pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.

In summary, the department may withhold the information you have marked pursuant to section 552.108 of the Government Code. The department must withhold the information you have marked under section 552.130 of the Government Code and the information we have marked pursuant to section 552.101 in conjunction with section 411.083 of the Government Code. The remaining submitted 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, 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 348813

Enc. Submitted documents

cc: Requestor
(w/o enclosures)