



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2009

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
1400 South Lamar
Dallas, Texas 75215

OR2009-07801

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# 345894 (DPD Open Records Request: 2009-2399).

The Dallas Police Department (the "department") received a request for the offense report and investigative file from service number 0362124-V. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the submitted information includes court orders subject to disclosure under section 552.022 of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court orders, which we have marked, under section 552.108 of the Government Code, that section is a discretionary exception to

¹We 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.

disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the department may not withhold the marked court orders under section 552.108. As you have claimed no other exceptions to disclosure for these documents, they must be released.

We next address your argument under section 552.108 of the Government Code, as this is the most encompassing exception you raise. You have marked portions of the remaining information at issue under section 552.108(a)(1), which 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 inform this office that the information you marked under section 552.108 relates to a pending criminal investigation and prosecution. Based on your representations, we conclude the department may withhold the remaining information you have marked under section 552.108(a)(1). *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 now address your arguments regarding the remaining information at issue. 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. You claim that some of the remaining information contains criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Section 411.083 of the Government Code, which is encompassed by section 552.101 of the Government Code, deems confidential CHRI that the 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 id.* § 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. 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. Upon review, we conclude CHRI that you have marked, in addition to the

information we have marked, is confidential under section 411.083 and must be withheld under section 552.101 of the Government Code.

Next, you raise section 552.130 of the Government Code for a portion of the remaining information. Section 552.130 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). We note that the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas driver's license and motor vehicle record information that pertain to a deceased individual may not be withheld under section 552.130. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded”) (quoting Restatement of Torts 2d); see also Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). The department must generally withhold the Texas driver's license and motor vehicle information you have marked under section 552.130 of the Government Code. However, we note that some of the Texas motor vehicle information at issue relates to an individual who is now deceased. Accordingly, any license plate number or vehicle identification number that pertains to a deceased individual must be withheld under section 552.130 only if a living person owns an interest in the vehicles at issue. If no living person owns an interest in the vehicles at issue, then the information we have marked is not excepted from disclosure and must also be released.

In summary, except for the documents we have marked for release under section 552.022(a)(17) of the Government Code, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. To the extent the marked Texas driver's license and motor vehicle information pertains to living person, that information must be withheld under section 552.130 of the Government Code. The remaining information at issue must be released to the requestor.²

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

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

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 345894

Enc. Submitted documents

c: Requestor
(w/o enclosures)