



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2009

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2009-13578

Dear Ms. Cohen:

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# 361046 (DPS 09-1713).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified accident. You state you will release some information to the requestor. You claim the remaining requested 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 information.

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 information at issue constitutes CHRI generated by the 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. However, none of the remaining information at issue constitutes CHRI, and it may not be withheld under section 552.101 on that basis.

Next, you assert the information you have marked is excepted from disclosure under section 552.108(a)(1) 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). A governmental body claiming section 552.108 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). You state the submitted information relates to an ongoing criminal case. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *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). However, the information you have marked contains a Statutory Warning and a Notice of Suspension. The department provided copies of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code* § 552.108(a)(1). Accordingly, the Statutory Warning and Notice of Suspension may not be withheld under section 552.108. Because the remaining information at issue has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is generally applicable to the remaining information you have marked.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the Statutory Warning, Notice of Suspension, and basic information, the department may withhold the information you have marked under section 552.108.

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 in the remaining information must be withheld under section 552.130 of the Government Code.

You also seek to withhold the marked social security number under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. The department may withhold the social security number you have marked under section 552.147.¹

In summary, the department must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.083 of the Government Code. With the exception of the Statutory Warning, Notice of Suspension, and basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information you have marked in under section 552.130 of the Government Code. The department may withhold the social security number you have marked 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, 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, toll free, at (888) 672-6787.

Sincerely,



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

ALS/rl

¹Section 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.

Ref: ID# 361046

Enc. Submitted documents

cc: Requestor
(w/o enclosures)