



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2010

Mr. Rodolfo Ramirez
Assistant District Attorney
Fort Bend County District Attorney's Office
301 Jackson Street
Richmond, Texas 77469

OR2010-10409

Dear Mr. Ramirez:

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# 386273.

The Fort Bend County District Attorney's Office (the "district attorney") received a request for nine categories of information pertaining to a specified case and communications between the district attorney and the requestor. You claim some of the submitted information is subject to section 552.027 of the Government Code. You claim that the remaining 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. We have also received and considered comments submitted by the requestor. *See Gov't Code* § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note that Exhibit E and the information we have indicated in Exhibit F are not responsive to the instant request for information because they do not relate to the categories of information requested. Further, we note that the requestor, in his communication to our office, excluded social security numbers from his request for information; therefore this information is not responsive to the request and the district attorney is not required to release such information in response to the request. *See generally id.* § 552.147(b) (governmental body may redact living person's social security number from public release without necessity

of requesting decision from this office under the Act). This ruling does not address the public availability of any information that is not responsive to the request.

Next, you state that a portion of the responsive information is commercially available information. Section 552.027 of the Government Code provides as follows:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Id. § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. You state Exhibit C consists of cases obtained from Westlaw, which you state is a commercially available service. In this instance, however, the requestor has not requested commercially available publications in particular, but rather the requestor seeks all information related to a specified cause and defendant. We note this information cannot be obtained by a member of the public if the member of the public is not aware of which documents were relied upon by the district attorney. The fact that commercially available research materials happen to be responsive to the request does not, in our view, bring such materials within the ambit of section 552.027. Accordingly, due to the nature of the request, we determine that Exhibit C is not subject to section 552.027 and it may not be withheld on that basis.

Next, we must address the district attorney's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written

request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, you state the district attorney received the request for information on April 8, 2010. You did not, however, request a ruling from this office until May 6, 2010. Furthermore, you did not submit comments explaining why your stated exceptions apply or a copy of the information requested until May 6, 2010. You state the district attorney notified the requestor, pursuant to section 552.221(d) of the Government Code, the district needed additional time to retrieve the requested records and that the district attorney anticipated obtaining the documents by April 28, 2010. While section 552.221 does allow a governmental body that does not seek to withhold responsive information from disclosure to negotiate with the requestor the date and hour the information will be made available, it does not grant a governmental body additional time to seek an open records decision and submit the information at issue in accordance with section 552.301. *See id.* § 552.221(d). Furthermore, the deadlines prescribed by section 552.301 are fixed by statute and cannot be altered by agreement. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (obligations of a governmental body under predecessor to Act cannot be compromised simply by decision to enter into contract), 514 at 1-2 (1988). Thus, we find the district attorney failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you also assert some of the submitted information is excepted under section 552.108 of the Government Code, this section is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, no portion of the submitted information may be withheld under section 552.108 of the Government Code. However, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the responsive submitted information.

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 that other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. *See* Gov't Code § 411.083(a). 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 at 7 (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 the Department of Public Safety ("DPS") maintains, except 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. Similarly, 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). The district attorney must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.¹

You claim some of the remaining responsive information, which you have indicated, is confidential under section 552.130, which 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. Gov't Code § 552.130(a)(1), (2). The district attorney must withhold the Texas motor vehicle record information you have indicated under section 552.130 of the Government Code. We have marked additional information that must be withheld under section 552.130 of the Government Code.²

In summary, the district attorney must withhold the CHRI we have marked under 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. The district attorney must withhold the Texas motor vehicle record

¹As our ruling is dispositive, we need not address your remaining arguments for this information. We note that the requestor can obtain his own CHRI from the Texas Department of Public Safety. *See* Gov't Code § 411.083(b)(3).

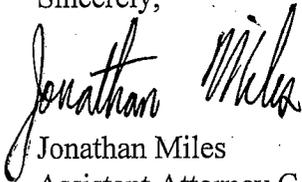
²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

information you have indicated, and the additional information we have marked, under section 552.130 of the Government Code. The remaining responsive 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 386273

Enc. Submitted documents

c: Requestor
(w/o enclosures)