



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2011

Mr. Conor G. Bateman
Bateman & Bateman, L.L.P.
For City of Athens
214 East College Street
Athens, Texas 75751

OR2011-06610

Dear Mr. Bateman:

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# 417361.

The City of Athens (the "city"), which you represent, received a request for information obtained by the city during a background investigation of the requestor. You state some responsive information has been released to the requestor. We understand you to claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your claim and reviewed the submitted information.¹

Initially, we note that the city has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body

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.

has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). The city has redacted, in part, a Texas driver's license number. Redacting of a Texas driver's license number without first requesting a decision from this office is now permitted pursuant to the previous determination issued to all governmental bodies in Open Records Decision 684 (2009), which authorizes the withholding of ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code. We note, however, that section 552.130 protects personal privacy, and the requestor is the individual whose driver's license number is at issue. Therefore, the requestor has a right of access to his Texas driver's license number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to that person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Information to which the requestor has a right of access under section 552.023 may not be withheld from him under section 552.130. Furthermore, you do not assert, nor does our review of our records indicate, that the city is authorized to withhold any of the remaining redacted information without first seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). We will, however, address your claim under section 552.101 of the Government Code for the remaining redacted information, as we are able to discern the nature of this information. However, in the future, the city must not redact information from the information it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

Section 552.101 of the Government Code exempts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 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 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 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* 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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find portions of the submitted information, which we have marked, consist of CHRI that is confidential under section 411.083. Thus, the department must withhold the marked information under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated the remaining information constitutes CHRI for purposes of chapter 411 of the Government Code. Accordingly, the remaining submitted information may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 411.192 of the Government Code, which governs the release of information maintained by the DPS concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides in part:

(a) The [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a)-(b). We have marked information that is related to a concealed handgun license. The city appears to have obtained that information from the DPS. We note that the requestor is the license holder. Therefore, except for the requestor's name, date of birth, gender, race, and zip code, which must be released pursuant to section 411.192(b), the city must withhold the marked information under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 411.083 of the Government Code

and (2) section 411.192 of the Government Code. The remaining submitted information must be released to the requestor.²

Finally, you request that this office issue a "previous determination" that would permit the city or all Texas municipalities in the future to withhold from disclosure information from the NCIC/TCIC/TLETS databases without the need of requesting a ruling from this office about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 417361

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office.