



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2012

Mr. Jon Thatcher
Assistant Criminal District Attorney
Rockwall County
1111 East Yellowjacket Lane, Suite 201
Rockwall, Texas 75087

OR2012-10922

Dear Mr. Thatcher:

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# 458929.

The Rockwall County Criminal District Attorney's Office (the "district attorney's office") received a request for a specified case file. You state some of the requested information has been or will be provided to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also inform us that release of some of this information may implicate the interests of the Federal Bureau of Investigation (the "FBI"). Accordingly, the district attorney's office notified the FBI of the request and of its opportunity to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclosure under Act in certain circumstances). We have received comments from the FBI. We have considered the submitted arguments and reviewed the submitted information.

The FBI states some of the submitted documents, which the FBI provided to the district attorney's office, "were compiled for a law enforcement purpose, a criminal investigation[.]" 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 office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records

Decision No. 561 we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that the federal Freedom of Information Act (“FOIA”), applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6; *see* 5 U.S.C. § 552. Further, we stated that information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded that: “when information in the possession of a federal agency is ‘deemed confidential’ by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law.” *Id.* at 7. Accordingly, if a federal agency shares its information with a Texas governmental agency, the Texas agency must withhold the information the federal agency determines to be confidential under federal law. *See id.* at 6-7; *accord United States v. Napper*, 887 F.2d 1528, 1530 (11th Cir. 1989) (finding documents FBI lent to city police department remained property of FBI and were subject to any restrictions on dissemination of FBI-placed documents).

The FBI asserts the information at issue is confidential under FOIA as records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or physical safety of individuals. *See* 5 U.S.C. § 552(b)(7)(F). Therefore, we conclude the information submitted to the district attorney’s office by the FBI, which you have marked, must be withheld under section 552.101 of the Government Code in conjunction with FOIA.¹

Section 552.101 of the Government Code also encompasses federal and state laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (the “NCIC”) or the Texas Crime Information Center is confidential under federal and state law. 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 obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* Open Records Decision No. 565 at 7 (1990); *see also generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in subchapter F of chapter 411 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. *See id.*

¹As our ruling for this information is dispositive, we need not address the FBI’s remaining arguments against its disclosure.

§ 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 subchapter F of chapter 411 of the Government Code. We note, however, 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 criminal justice system). You claim the remaining information is subject to subchapter F of chapter 411 of the Government Code. Upon review, we find a portion of the information you have marked does not constitute CHRI for purposes of subchapter F of chapter 411. Accordingly, the district attorney's office may not withhold this information, which we have marked for release, under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. However, we conclude the remaining information you have marked constitutes CHRI for purposes of subchapter F of chapter 411 and the district attorney's office must withhold this information under section 552.101 on that basis.²

We note portions of the remaining information are subject to section 552.130(a)(1) of the Government Code.³ This section provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1). Accordingly, the district attorney's office must withhold the driver's license information we have marked under section 552.130(a)(1) of the Government Code.

In summary, the district attorney's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with FOIA. Except for the information we have marked for release, the district attorney's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. The driver's license information we have marked must be withheld under section 552.130(a)(1) of the Government Code. The remaining information must be released.⁴

²We note an individual may obtain his own CHRI from the Department of Public Safety. *See Gov't Code* § 411.083(b)(3).

³The 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).

⁴We note the information being released contains a social security number. Section 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. *See Gov't Code* § 552.147(b).

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 458929

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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