



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2013

Ms. Angela Sessums
Warrants Manager
Wise County Sheriff's Department
200 Rook Ramsey Drive
Decatur, Texas 76234

OR2013-02935

Dear Ms. Sessums:

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# 480049.

The Wise County Sheriff's Department (the "department") received a request for information pertaining to the booking of the requestor with the department after her arrest. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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. *Id.* § 552.301(e). You do not inform us when the department received the request for information. *See id.* § 552.301(e)(1)(C). Because of this, we must assume the department received the request on the day the request is dated, which is November 19, 2012. We understand the department was closed for business on November 22 and 23, 2012. Thus, the deadline of the department under section 552.301(b) was December 5, 2012, and its deadline under section 552.301(e) was December 12, 2012. However, the envelope containing your request for a ruling and its

accompanying documents is postmarked December 18, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, the department failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 5 (2000) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Thus, the claim of the department under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the department may not withhold any of the submitted information under section 552.108. However, section 552.101 of the Government Code can provide a compelling reason to overcome this presumption.¹ Accordingly, we will consider whether this section requires you to withhold the 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 section encompasses information protected by other statutes, including chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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 law with respect to CHRI it generates. *Id.* 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 criminal justice purposes. *See* Gov't Code § 411.089(b)(1). The submitted information contains a Federal Bureau of Investigation ("FBI") number that constitutes CHRI generated by the FBI. Therefore, the department must

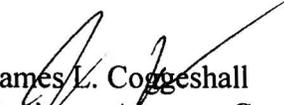
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.² However, the department must release the remaining information to the requestor.³

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

²We note individuals may obtain their own criminal record history information from DPS. See Gov't Code § 411.083(b)(3).

³We note the information to be released includes motor vehicle record information, fingerprints, a social security number, and other private information to which the requestor has a right of access under sections 552.023 and 560.002 of the Government Code. See Gov't Code §§ 552.023, 560.002. Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *Id.* § 552.130(c). 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. *Id.* § 552.147(b). In addition, Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision. Accordingly, if the department receives another request for information from an individual other than the requestor, the department is authorized to withhold the requestor's motor vehicle record information described in subsections 552.130(a)(1) and (a)(3) of the Government Code, social security number, and fingerprints under section 552.130(c), section 552.147(b), and Open Records Decision No. 684 without the necessity of requesting a decision from this office. However, the department must again seek a decision from this office regarding the remaining information to which the requestor has a right of access under section 552.023 if it receives a request for this information from a different requestor.

Ref: ID# 480049

Enc. Submitted documents

c: Requestor
(w/o enclosures)