



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 23, 2013

Mr. Nathaniel T. Wood  
Assistant District Attorney  
Wharton County District Attorney's Office  
100 South Fulton, Suite 100  
Wharton, Texas 77488

OR2013-12680

Dear Mr. Wood:

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# 493983.

The Wharton County District Attorney's Office (the "district attorney's office") received a request for the complete offense reports, TDC summary, and pre-sentencing reports related to a specified case. You indicate the district attorney's office does not have any responsive pre-sentencing reports.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed 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. 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." *See id.* § 411.082(2). Title 28, part 20 of the Code of

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 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.* § 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 state Exhibit A contains a summary of criminal history records obtained from DPS. Based on your representation and our review, we find the information we have marked in this exhibit constitutes CHRI that must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.<sup>2</sup> However, we find you have failed to demonstrate how the remaining information in Exhibit A constitutes CHRI for purposes of chapter 411 or federal law. Thus, none of the remaining information in Exhibit A may be withheld under section 552.101 in conjunction with chapter 411 or federal law.

You claim the remaining information in Exhibit A is protected by article 60.03 of the Code of Criminal Procedure. Section 552.101 of the Government Code also encompasses article 60.03, which provides, in pertinent part:

(a) Criminal justice agencies . . . are entitled to access the data bases of the Department of Public Safety, the Texas Juvenile Probation Commission, the Texas Youth Commission, and the Texas Department of Criminal Justice in accordance with applicable state or federal law or regulations. The access granted by this subsection does not grant an agency . . . the right to add, delete, or alter data maintained by another agency.

. . .

(c) . . . a criminal justice agency . . . may [not] disclose to the public information in an individual's criminal history record if the record is protected by state or federal law or regulation.

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<sup>2</sup>We note the requestor may obtain her client's CHRI from DPS. *See* Gov't Code § 411.083(b)(3).

Crim. Proc. Code art. 60.03. Upon review, we find the remaining information in Exhibit A does not constitute criminal history information for purposes of article 60.03 and, therefore, the district attorney's office may not withhold this information under section 552.101 of the Government Code on that basis.

You seek to withhold portions of Exhibit B under sections 552.130 and 552.147 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130(a)(1)-(2). We note section 552.130 protects personal privacy. In this instance, the requestor is an attorney for the individual whose motor vehicle record information is at issue. As her client's representative, the requestor has a right of access to any of her client's private information that would otherwise be excepted from public disclosure pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) (person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, none of the motor vehicle record information you have marked in Exhibit B may be withheld under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *See Gov't Code* § 552.147. You have marked the requestor's client's social security number in Exhibit B under section 552.147. However, as previously noted, the requestor has a right of access to information pertaining to her client that would otherwise be withheld on the basis of privacy. *See id.* § 552.023(a); ORD 481 at 4. Because section 552.147 is based on principles of privacy, the social security number you have marked in Exhibit B may not be withheld from the requestor.

In summary, the information we have marked in Exhibit A must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. As no further exceptions to disclosure are raised for the remaining information, the district attorney's office must release it.<sup>3</sup>

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<sup>3</sup>We note the information being released includes the requestor's client's motor vehicle record information and social security number, to which the requestor has a right of access as her client's authorized representative. *See Gov't Code* § 552.023(a); ORD 481 at 4. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1* (to be codified as amendment to *Gov't Code* § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See Gov't Code* § 552.130(d), (e). Additionally 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). Thus, if the district attorney's office receives another request for this same information from a person who does not have such a right of access, sections 552.130(c) and 552.147(b) authorize the district attorney's office to redact the requestor's client's motor vehicle record information and social security number, respectively.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 493983

Enc. Submitted documents

c: Requestor  
(w/o enclosures)