



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2014

Ms. Rebecca R. Walton  
Hardin County Attorney  
P.O. Box 516  
Kountze, Texas 77625

OR2014-18849

Dear Ms. Walton:

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# 540367.

The Hardin County Sheriff's Office (the "sheriff's office") received five requests from different requestors for information related to a specified incident. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note a portion of the information you submitted in response to the first request, which we have marked, is not responsive to the first request because it was created after the sheriff's office received the first request. This ruling does not address the public availability of the information that is not responsive to the first request, and the sheriff's office is not required to release this information in response to the first request.

Section 552.103 of the Government Code provides, in relevant part, as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.]1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You state the information at issue pertains to an incident that "is currently under investigation" by the sheriff's office. However, we find you have failed to demonstrate the sheriff's office was a party to pending or anticipated litigation on the date it received the requests for information. Accordingly, none of the responsive information may be withheld on the basis of section 552.103 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>1</sup> Gov’t Code § 552.101. Section 552.101 encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records may not be withheld, subject to a discretionary exception under Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. A portion of the responsive information consists of photographs taken during autopsies. We note neither of the statutory exceptions to confidentiality is applicable in this instance. Upon review, we find the sheriff’s office must withhold the photographs we have marked under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). 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 that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. 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;

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. Furthermore, 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. We note because the laws governing the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. Upon review, we find the Federal Bureau of Investigation (“FBI”) number we have marked constitutes CHRI generated by the FBI which must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. The purpose of section 552.130 is to protect the privacy interests of individuals. As noted above, because the right of privacy lapses at death, information that pertains solely to deceased individuals may not be withheld under section 552.130 of the Government Code. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. Upon review, we find the sheriff’s office must generally withhold the motor vehicle record information we have marked, which pertains to a living individual, under section 552.130 of the Government Code.

However, as noted above, section 552.130 protects privacy interests. In this instance, the third requestor is the insurance provider of the individual whose privacy interests are at issue and may be acting as this individual’s authorized representative. Thus, he may have a right of access to this individual’s motor vehicle record information. *See* Gov’t Code § 552.023(a) (“person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the third requestor is acting as this individual’s authorized representative, then he has a right of access to the motor vehicle record information pertaining to his client pursuant to section 552.023, and this information may not be withheld from him under section 552.130. In that instance, the sheriff’s office must release the motor vehicle record information we have marked to this requestor. However, if the third requestor is not acting as his client’s authorized representative, then the sheriff’s office must withhold this information from this requestor under section 552.130 of the Government Code. In either case, the sheriff’s office

must withhold the motor vehicle record information we have marked from the remaining requestors under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the sheriff’s office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, the sheriff’s office must withhold the photographs we have marked under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The sheriff’s office must withhold the FBI number we have marked pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff’s office must withhold the motor vehicle record information we have marked, which pertains to a living individual, under section 552.130 of the Government Code; however, the sheriff’s office must release the motor vehicle record information we have marked to the third requestor if this requestor is acting as the authorized representative of the individual whose privacy interests are at issue. The sheriff’s office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. The sheriff’s office must release the remaining responsive information.<sup>2</sup>

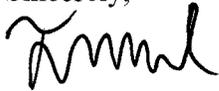
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>We note the information being released contains the social security numbers of living individuals. Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov’t Code § 552.147(b). As noted above, the third requestor may be acting as the authorized representative of one of the individuals whose social security number is at issue. Because section 552.147 protects personal privacy, the third requestor may have a right of access to this individual’s social security number as his authorized representative under section 552.023 of the Government Code. *See id.* § 552.023(a), ORD 481 at 4. Therefore, if the third requestor is this individual’s authorized representative, then this individual’s social security number may not be withheld from the third requestor under section 552.147(b). If the third requestor is not this individual’s authorized representative, then this individual’s social security number may be withheld from the third requestor under section 552.147(b). In either case, the sheriff’s office may withhold this individual’s social security number from the remaining requestors under section 552.147(b), and may withhold the remaining social security numbers of living individuals from all requestors under section 552.147(b).

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,

A handwritten signature in black ink, appearing to read "Tim Neal", written in a cursive style.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 540367

Enc. Submitted documents

c: Requestors  
(w/o enclosures)