



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2015

Mr. Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2015-09142

Dear Mr. Bowman:

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# 563555 (TLDR# PIR-20150384).

The Texas Department of Licensing and Regulation (the "department") received a request for all documents, notes, and files pertaining to a specified complaint number. You state the department released some of the requested information. We understand you have redacted a personal e-mail address under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009) and a social security number under section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from

¹Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code without the necessity of requesting an attorney general decision. 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. *See* Gov't Code § 552.147(b).

disclosure under section 552.101 of the Government Code.² We have considered the exception 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. Section 552.101 encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (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 the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

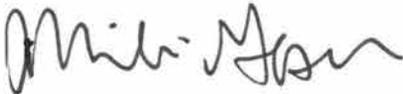
Sections 411.093 and 411.122 of the Government Code both provide the department is entitled to obtain from DPS CHRI that relates to a person who is a holder of a license issued by the department. *See id.* §§ 411.093, .122. However, the department may not release CHRI except as provided by chapter 411. *See id.* §§ 411.083, .084(c) (agency may not confirm existence or nonexistence of CHRI to any person not eligible to receive the information). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. 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 chapter 411 of the Government Code. You state some of the submitted information consists of CHRI obtained from DPS regarding a licensee. Based on your representation and our review, we conclude the information you have marked consists of confidential CHRI regarding a licensee, obtained by the department from DPS. Therefore, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. As you raise no further exceptions to disclosure, the department must release the remaining information.

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.

²We note the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov’t Code § 552.301 (b), (e). Nonetheless, section 552.101 is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the department’s violation of section 552.301 in requesting this decision.

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, 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 "Mili Gosar". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 563555

Enc. Submitted documents

c: Requestor
(w/o enclosures)