



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 5, 2016

Ms. Leslie O. Haby  
Assistant Criminal District Attorney  
Civil Section  
Bexar County  
101 West Nueva Street, Seventh Floor  
San Antonio, Texas 78205

OR2016-02808

Dear Ms. Haby:

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# 597941 (BCDA ID# 4582).

The Bexar County District Attorney's Office (the "district attorney's office") received a request for all information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. You also state you have notified VIA Metropolitan Transit ("VIA"), which may have an interest in the requested information, pursuant to section 552.304 of the Government Code. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from VIA. We have considered the submitted arguments and reviewed the submitted information.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

*Id.* § 552.108(a)(2), (4), (b)(2), (3). A governmental body claiming section 552.108(a)(2) or 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. It is not clear to this office, nor have you explained, how the requested information pertains to a concluded criminal investigation. Thus, you have not met your burden under section 552.108(a)(2) or 552.108(b)(2). You also do not assert the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the district attorney's office may not withhold any of the submitted information under section 552.108.

Section 552.101 of the Government Code excepts from public 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, such as chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* §411.083(a). 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 laws with respect to the CHRI it generates. *See id.* 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, or subchapter E-1 of the Government Code. *See Gov’t Code* § 411.083(a). 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. *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 chapter 411, subchapter F, of the Government Code. We note 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 the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find a portion of the submitted information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the district attorney’s office must withhold the marked information under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the district attorney’s office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or 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. *Id.* § 552.130(a). We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find the district attorney’s office must withhold the discernible license plate numbers in the submitted documents and photographs under section 552.130 of the

Government Code. Further, the submitted video recordings contain motor vehicle records information. You state the district attorney's office lacks the technological capability to redact this confidential information from the video recordings. Accordingly, the district attorney's office also must withhold the video recordings in their entirety under section 552.130 of the Government Code.<sup>1</sup> *See* Open Records Decision No. 364 (1983).

In summary, the district attorney's office must withhold the marked information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The district attorney's office must withhold the discernible license plate numbers in the submitted documents and photographs as well as the submitted video recordings in their entirety under section 552.130 of the Government Code. The remaining information must be released.<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.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/dls

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<sup>1</sup>As our ruling for this information is dispositive, we need not address the remaining arguments against its disclosure.

<sup>2</sup>We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a). If the district attorney's office receives another request for this particular information from a different requestor, then the district attorney's office should again seek a decision from this office.

Ref: ID# 597941

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

Mr. Thomas Bailey  
Legal Services  
VIA Metropolitan Transit  
P.O. Box 12489  
San Antonio, Texas 78212-0489  
(w/o enclosures)