



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2022

Ms. Cecilia Gamez
Lead CSS
City of McAllen
P.O. Box 220
McAllen, Texas 78501

OR2022-11191

Dear Ms. Gamez:

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# 942518 (PIR No. 72499).

The McAllen Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor's client. You state you do not have information responsive to a portion of the request.¹ You also state you released some information to this requestor. You claim the submitted information is exempted from disclosure under sections 552.101 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.130 of the Government Code exempts from disclosure 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 exempted from public release. *See Gov't Code § 552.130.* Upon review, we find one of the submitted video recordings contains confidential motor vehicle record

¹ 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).

² Although you raised section 552.101 in conjunction with common-law privacy, you make no arguments in support of this assertion, nor have you marked any information as being exempted under this exception. Therefore, we assume you have withdrawn this exception. *See Gov't Code §§ 552.301, .302.*

information not belonging to the requestor's client. In this instance, the department states it does not possess the technological capability to redact information from video recordings. Thus, with the exception of the video recording we indicated for release, the department must withhold the submitted information in its entirety under section 552.130 of the Government Code.³ *See* Open Records Decision No. 364 (1983). However, we find the department failed to demonstrate the remaining recording is subject to section 552.130 of the Government Code. Therefore, the department may not withhold the remaining recording under section 552.130 of the Government Code.

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 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). Upon review, we find the department has not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

In summary, with the exception of the video recording we indicated for release, the department must withhold the submitted information in its entirety under section 552.130 of the Government Code. The department must release the remaining video recording.

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.

³ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Pearlie Gault
Attorney
Open Records Division

PG/mo

Ref: ID# 942518

Enc. Submitted documents

c: Requestor
(w/o enclosures)