



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 22, 1997

Mr. Kevin W. Kapitan
Assistant City Attorney
Police Legal Advisor
Fort Worth Police Department
350 West Belknap
Fort Worth, Texas 76102

OR97-2109

Dear Mr. Kapitan:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act") 552 of the Government Code. Your request was assigned ID# 109119.

An Assistant City Attorney for the City of Fort Worth (the "city") received a request from a police department applicant for his background investigation file. You assert that the requested file is excepted from required public disclosure based on section 552.108 of the Government Code. You also assert that portions of the file are excepted from public disclosure based on section 552.101 of the Government Code and that the requestor has waived his right of access to the requested information.

The act does not permit a governmental body to effectuate a waiver of a requestor's right of access to public information. Furthermore, a governmental body generally cannot enter into agreements to keep information confidential. *See* Open Records Decision No. 114 (1975). The city may not withhold the requested information based on an alleged waiver of the requestor's right to obtain the information.

The Seventy-Fifth Legislature amended section 552.108 of the Government Code by adding the following provision:

(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 [public disclosure] if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]
- (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;

See Act of June 1, 1997, H.B. 951, § 1, 75th Leg., R. S. (to be codified at Gov't Code § 552.108(b)(1) and (2)). We do not believe this exception applies to the requested information. *Cf.* Open Records Decision No. 562 (1990) at 10 (section 552.108(b) predecessor provision inapplicable to employment information in police officer's file). Accordingly, the city may not withhold the requested information from the requestor based on section 552.108.

We agree that the city must withhold from the requestor the criminal history record information ("CHRI"). Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which 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 law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of criminal history record information CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information 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 are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any criminal history record information generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565(1990). Furthermore, any criminal history record information 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. Please note, however, that driving record information is not confidential under chapter 411, *see* Gov't Code § 411.082(2)(B), and must be disclosed.¹

¹Section 552.023 of the Government Code grants a person a special right of access to records that contain information relating to that person. Gov't Code 552.023(a). A governmental body may not deny access to information to a person based on law intended to protect that person's privacy interests. *Id.*

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/rho

Ref.: ID# 109119

Enclosures: Submitted documents

cc: Mr. Ross Dobelbower
5000 Celtic Court
Arlington, Texas 76017
(w/o enclosures)

§ 552.023(b). However, a governmental body may deny access to a person to information about that person if the information is protected from disclosure by law that protects law enforcement interests as well as privacy interests. *See* Open Records Decision No. 587 (1991). We believe the laws and regulations governing the release of CHRI protect law enforcement as well as privacy interests. Accordingly, we do not believe the requestor has a special right of access to the CHRI based on section 552.023 of the Government Code.

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