



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 18, 2009

Mr. Jason Day  
City Attorney  
City of Royse City  
P.O. Box 638  
Royse City, Texas 75189

OR2009-02076

Dear Mr. Day:

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# 335344.

The Royse City Police Department (the "department") received a request for information relating to a named individual. You state that some of the requested information has been released. You claim that the rest of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note that some of the submitted information is not responsive to this request. In this instance, the request is for "all arrest details" regarding the named individual. Thus, because the information relating to case number 08-04-0136 does not involve an instance in which the named individual was arrested, that information is not responsive to this request. Accordingly, this decision does not address the public availability of the information relating to case number 08-04-0136, and the department need not release that information in response to this request.<sup>1</sup>

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<sup>1</sup>As we are able to make this determination, we do not address your claim for the non-responsive information under section 552.101 of the Government Code.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked information relating to case number 08-07-0011 that the department seeks to withhold under section 552.108. You state that the marked information is related to a pending criminal investigation. Based on your representation, we conclude that section 552.108(a)(1) is applicable to the marked information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note that the requestor is an investigator with US Investigative Services (“USIS”) who requests the information at issue as part of a background investigation for a national security or public trust employment position. We also note that USIS is under contract to perform investigations on behalf of the United States Office of Personnel Management (“OPM”). The OPM is authorized to perform background investigations of prospective federal employees to ensure that applicants have not broken the law or engaged in other conduct making them ineligible for federal employment. *See Mittleman v. Office of Pers. Mgmt.*, 76 F.3d 1240, 1243 (D.C. Cir. 1996); *see also* 5 U.S.C. §§ 3301 (president may prescribe regulations for admission of individuals into civil service), 1304 (investigations conducted by OPM), 1104 (president may delegate personnel management functions to OPM); 5 C.F.R. pts. 731, 732, 736 (authorizing OPM to investigate applicants for federal employment). The OPM is subject to Executive Order Number 10,450, which provides that “[t]he appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation.” Exec. Order No. 10,450, § 3, 18 Fed. Reg. 2489 (Apr. 27, 1953), reprinted as amended in 5 U.S.C. § 7311 (2000). While the scope of the investigation depends on the relation of the employment to national security, “in no event shall the investigation include less than a national agency check (including a check for the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law enforcement agencies.” *Id.* The OPM has a right to the criminal history record information (“CHRI”) of state and local criminal justice agencies when its investigation is conducted with the consent of the individual being investigated. *See* 5 U.S.C. § 9101(b)(1), (c). Furthermore, where the USIS conducts an investigation on behalf of the OPM, the USIS is authorized to receive CHRI. *See* 20 Op. Off. Legal Counsel 299 (1996). CHRI is defined as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release,” but does not include “identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system” or “records of a State or locality sealed pursuant to law from access by State and local

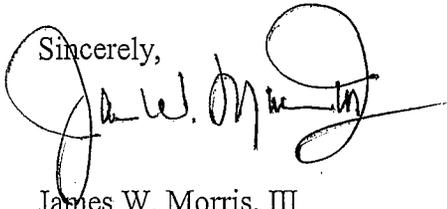
criminal justice agencies of that State or locality.” 5 U.S.C. § 9101(a)(2). The requestor has submitted written consent from the individual under investigation for the release of that individual’s CHRI. Thus, we conclude that, where a requestor seeks information as part of an investigation conducted on behalf of the OPM, the requestor has a right of access to CHRI held by the department regarding the individual under investigation.

In this instance, the submitted information relating to case number 08-07-0011 includes CHRI to which the requestor has a right of access. We find, however, that the CHRI is contained in the information that the department has released. We therefore conclude that the department may withhold the marked information relating to case number 08-07-0011 under section 552.108(a)(1) of the Government Code.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 335344

Enc: Submitted documents

c: Requestor  
(w/o enclosures)