



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 25, 2009

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2009-03861

Dear Ms. Byles:

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# 338616 (Fort Worth Request No. 1487-09).

The City of Fort Worth (the "city") received a request for a specified incident report. You have redacted Texas-issued motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You have also redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim that the remaining 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 submitted information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.*

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<sup>1</sup>Section 552.147(b) 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 under the Act.

§ 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us, and provide an affidavit stating, that the Tarrant County District Attorney's Office objects to disclosure of the submitted report because its release would interfere with a pending criminal prosecution. Based upon this representation and the submitted affidavit, we conclude that the release of the report would interfere with the detection, investigation, or prosecution of crime. *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). Therefore, we conclude that section 552.108(a)(1) is applicable to the report.

As you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See Gov't Code* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 184-85; *see also* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). In this case, however, the city seeks to withhold some of the basic information in the submitted report under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Gov't Code* § 552.101. This section encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and of no legitimate public interest. *See Indust. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information must be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* We determine whether a request for information presents such "special circumstances" on a case-by-case basis. *Id.* at 7.

In this instance, the city seeks to withhold the name of the investigating officer, who is also an undercover officer, under section 552.101 of the Government Code. You inform us that release of the highlighted information, which identifies the undercover officer, would not only compromise the effectiveness of this individual as an undercover officer, but would likely cause the officer to face imminent threat of physical danger. Based on these representations and our review, we agree that the city must withhold the highlighted information and the information we have marked in the basic information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Therefore, with the exception of basic information, the city may generally withhold the submitted information pursuant to section 552.108. The city must withhold the marked

identifying information of the undercover officer under section 552.101 of the Government Code in conjunction with common-law privacy.

In this instance however, we note that the requestor is a representative of the United States Army (the "Army"), and may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides that "[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information maintained by the [Department of Public Safety] about a person." *See* Gov't Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). We note that "criminal history record information" is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). Thus, the submitted information in this instance contains "criminal history record information." However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent the requestor in this instance is a "criminal justice agency," it is authorized to obtain criminal history record information from the city pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov't Code §§ 411.083(c), .087(a)(2).

A "criminal justice agency" is defined in part as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." Gov't Code § 411.082(3)(A). "Administration of criminal justice" has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines "administration of criminal justice" as the "performance of any of the following activities: detection, apprehension, pretrial release,

post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Code Crim. Proc. art. 60.01(1).

In this case, the requestor is an investigator with the United States Army. We cannot determine whether he is a representative of a criminal justice agency or whether he intends to use the criminal history record information for a criminal justice purpose. Consequently, if the city determines that this particular requestor is requesting the information on behalf of a criminal justice agency and intends to use the criminal history record information for a criminal justice purpose, we conclude that the city may make available to the requestor the criminal history record information from the documents, otherwise subject to section 552.108, that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of basic information, the city may withhold the remaining information under section 552.108 of the Government Code.

However, if the city determines that this particular requestor is not requesting the information on behalf of a criminal justice agency or does not intend to use the criminal history record information for a criminal justice purpose, then the city may withhold the submitted information, with the exception of basic information, under section 552.108 of the Government Code. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute’s enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure), 440 at 2 (1986) (construing predecessor statute). In either case, the city must withhold the marked identifying information of the undercover officer in the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the city may withhold the submitted report under section 552.108 of the Government Code. The city must withhold the marked identifying information of the undercover officer under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent that the requestor has a right of access to the criminal history record information in the report pursuant to subchapter F, Chapter 411 of the Government Code, the requestor is authorized to obtain that information in accordance with that chapter.

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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/dls

Ref: ID# 338616

Enc. Submitted documents

c: Requestor  
(w/o enclosures)