



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2009

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
1400 South Lamar
Dallas, Texas 75215

OR2009-04911

Dear Ms. Armstrong:

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# 339738 (DPD ORR ID# 2009-0641).

The Dallas Police Department (the "department") received a request for a specified criminal investigation file. You claim that portions of the submitted investigation file are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted documents contain a search warrant that has been filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. Such information must be released unless it is expressly confidential under other law. You claim the submitted court-filed document is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the department may not withhold the court-filed document, which we have marked, under section 552.108 of the Government Code. As you have claimed no other exceptions to disclosure for this document, it must be released.

We next address your argument under section 552.108 of the Government Code, as this is the most encompassing exception you raise. You have marked portions of the remaining information at issue under section 552.108(a)(1), which 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 inform this office that the information you marked under section 552.108 relates to a pending criminal investigation being conducted by the department. Based on your representations, we conclude the department may withhold the documents you marked within the remaining information at issue under section 552.108(a)(1).¹ *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 now address your arguments regarding the remaining information at issue. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. You claim that some of the remaining information contains criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Section 411.083 of the Government Code, which is encompassed by section 552.101 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 of the Government Code. *See id.* § 411.083. 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. Furthermore, any CHRI 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. Upon review, we have marked CHRI that is confidential under section 411.083. This information must be withheld under section 552.101 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state,” as well as “personal identification [information] issued by an agency of this state.” *Id.* §§ 552.130(a)(1), (a)(3). Therefore, the department must withhold the Texas-issued driver’s license and personal identification information you have marked, as well as the additional information we marked, within the remaining information at issue under section 552.130 of the Government Code.

You claim that the social security numbers you have marked within the remaining information are excepted from disclosure under section 552.147(b) of the Government Code, which provides that “[t]he social security number of a living person is excepted from”

¹As our ruling under section 552.108 is dispositive, we need not address your remaining arguments against disclosure of this information.

required public disclosure under the Act. *Id.* § 552.147. Therefore, the department may withhold the social security numbers in the remaining information at issue under section 552.147.

Finally, it appears you seek to withhold a telephone number you marked within the remaining documents. However, you have not submitted arguments explaining why you seek to withhold this number or that any exceptions to disclosure apply to this information. Therefore, we presume that you have withdrawn your claim to withhold the marked telephone number. *See id.* §§ 552.301, .302.

In summary, except for the document we marked for release under section 552.022(a)(17) of the Government Code, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. From the remaining information at issue, the department must withhold the information marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and section 552.130 of the Government Code. The department may withhold the information you marked under section 552.147 of the Government Code. The remaining information at issue must be released to the requestor.

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, 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 339738

Enc. Submitted documents

c: Requestor
(w/o enclosures)