



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, TX 76102

OR2009-18178

Dear Mr. Phillips:

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# 365878 (Ft. Worth PIR Nos. 0058-10, 0063-10, 0075-10, and 0146-10).

The City of Fort Worth (the "city") received four requests for a specified police report and the related 9-1-1 calls. You state that social security numbers and Texas motor vehicle record information have been redacted from the submitted information pursuant to section 552.147 of the Government Code and previous determinations issued to the city under section 552.130 of the Government Code.¹ You claim that the remaining 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 submitted information.

Section 552.108(a) 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

¹See Gov't Code § 552.147(b) (governmental body may redact living person's social security number from public release without necessity of requesting decision by attorney general under Act); Open Records Decision No. 673 (2001) (previous determinations).

information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have provided an affidavit from the Fort Worth Police Department stating that the information requested relates to an on-going criminal investigation and that the release of the information would interfere with the detection, investigation, and prosecution of the alleged crimes. Based upon this representation, we conclude section 552.108(a)(1) is applicable to the 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 section 552.108 is limited by section 552.108(c), which provides that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Basic information refers to the information set forth in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information not excepted from disclosure by 552.108 in *Houston Chronicle*). Therefore, with the exception of basic information, the city may generally withhold the submitted information under section 552.108 of the Government Code.²

We note that in this instance, one of the requestors is a representative of the Fort Worth Housing Authority (the "housing authority") who states the requested police report will be used to verify information leading to one of their households. The Texas Department of Public Safety (the "DPS") is required to provide criminal history record information ("CHRI") to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. Gov't Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded that a local housing authority is a noncriminal justice agency authorized by federal statute to obtain the CHRI of adult and juvenile tenants. Open Records Decision No. 655 at 4 (1997). The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of applicants and tenants. Section 1437d(q)(1)(A) of chapter 42 of the United States Code provides that "the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement, and eviction." 42 U.S.C. § 1437d(q)(1)(A). Thus, to the extent the housing authority is seeking CHRI regarding a tenant of public housing, the housing authority is authorized to receive CHRI from the DPS. Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." Gov't Code § 411.087(a)(2). Accordingly, the housing authority is also authorized to receive CHRI from a local criminal justice agency,

² As our ruling is dispositive, we need not address your remaining argument against disclosure.

such as the city's police department. *See* Open Records Decision No. 655 (1997); *see also* Gov't Code §§ 411.083(b)(2), 411.087(a). CHRI consists of "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." Gov't Code § 411.082(2).

Federal law limits the purposes for which a public housing authority may request CHRI. Federal law provides that (1) public housing agencies may receive CHRI for adult applicants for public housing or for adult and juvenile tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A). In this instance, the representative of the housing authority states she is seeking information about one of the housing authority's households. Consequently, if the requested law enforcement records relate to a tenant of the housing authority, we conclude that the city must make available to the housing authority the criminal history record information from the submitted offense report, 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 in the submitted report under section 552.108 of the Government Code. However, if the submitted law enforcement record does not relate to tenants of the housing authority, then, with the exception of basic information, the city may withhold the report under section 552.108 of the Government Code.

In summary, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code from the three non-housing authority requestors. With respect to the housing authority, if the submitted police report is related to tenants of the housing authority, the city must release the CHRI of adult and juvenile tenants of public housing in accordance with section 1437d(q)(1) of chapter 42 of the United States Code and Open Records Decision No. 655. In that instance, with the exception of basic information, the city may withhold the remainder of the report under section 552.108(a)(1) of the Government Code. Conversely, if the submitted law enforcement records do not relate to tenants of the housing authority, the city may withhold all but basic information 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,

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, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/eeg

Ref: ID# 365878

Enc. Submitted documents

c: Requestor
(w/o enclosures)