



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 9, 2010

Ms. Michelle L. Villareal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2010-05046

Dear Ms. Villareal:

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# 375372 (City of Waco Ref. # LGL-10-79).

The Waco Police Department (the "department") received two requests from the same requestor for any arrest forms pertaining to two named individuals, for information pertaining to a specific address, and for police report number 09-29661. You provide documentation showing the requested arrest forms for one of the named individuals do not exist. You state that you have released some information to the requestor. You also state that you have redacted information pursuant to Open Records Decision No. 684 (2009).¹ You claim that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception 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 provide documentation stating the

¹ This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including certain Texas motor vehicle information under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

submitted information relates to a pending case that has been sent to the District Attorney for prosecution. Based on this representation, we conclude section 552.108(a)(1) is applicable to the portions of the remaining information you have marked. 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).

However, we note, and you acknowledge, that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. The department must release basic information even if it does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note you have marked nearly the entire narrative portion of the submitted report as information you seek to withhold under section 552.108. However, the remaining portions of the report do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. See ORD 127. Accordingly, we determine the department must release a sufficient portion of the narrative section of the submitted report to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. The department generally may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.

Further, in this instance, we note that the remaining information contains information subject to common-law privacy.² 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find portions of the remaining information are intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We also note that in this instance, the requestor is a representative of the Waco Housing Authority (the "housing authority"). 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, such as the 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 does not state whether she is seeking information about one of the housing authority's tenants or applicants. Consequently, in the event the requested law enforcement records relate to a tenant or applicant of the housing authority, we conclude that the department must make available to the housing authority the CHRI 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 department may withhold the remainder of the information you have marked under section 552.108 of the Government Code. However, if the submitted information does not pertain to tenants or applicants of the housing authority, then, with the exception of basic information, the department may withhold all the information it has marked under section 552.108 of the Government Code. In either case,

the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the submitted information pertains to adult tenants or applicants of the housing authority, then the department must release the CHRI of those tenants or applicants 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 department may withhold the remainder of the information it has marked under section 552.108(a)(1) of the Government Code. Conversely, if the submitted police report does not relate to tenants or applicants of the housing authority, then with the exception of basic information, the department may withhold all of the information it has marked under section 552.108(a)(1) of the Government Code. In either case, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the requestor.³

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/cc

³ We note the information being released contains social security numbers, which you have marked. Section 552.147(b) of the Government Code 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.

Ref: ID# 375372

Enc. Submitted documents

c: Requestor
(w/o enclosures)