



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2011

Mr. Jeffrey L. Moore
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-06953

Dear Mr. Moore:

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# 417792.

The Forney Police Department (the "department"), which you represent, received a request for all police records related to a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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 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 state the submitted information pertains to an open case. Based on your representations and our review, we conclude the release of the information you marked will interfere with the investigation or prosecution of this case. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle* and includes an arrestee's social security number. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, the arrestee's social security number is basic information and may not be withheld under section 552.108(a)(1). However, you claim this social security number is excepted from disclosure by section 552.147 of the Government Code. This section provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147.¹ Thus, the department may withhold the arrestee's social security number under section 552.147 of the Government Code. Accordingly, with the exception of the remaining basic information, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.²

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 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. Similarly, 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. We note, however, that driving record information is not made confidential by the confidentiality provisions that govern CHRI. See *id.*

¹Section 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 an attorney general decision under the Act. Gov't Code § 552.147(b).

²As our ruling for this information is dispositive, we need not address your arguments under section 552.130 of the Government Code.

§ 411.082(2)(B) (definition of CHRI does not include driving record information). You have marked the information you seek to withhold as CHRI. We agree two of the records are CHRI generated by the NCIC or TCIC. Accordingly, this information must be withheld under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The other two records you marked under chapter 411 consist of either driving record information or information that was not generated by the NCIC or TCIC. Consequently, we find you have not demonstrated how these records are CHRI for purposes of chapter 411, and they may not be withheld under section 552.101.

Section 552.101 also encompasses section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You raise section 560.003 for fingerprints contained in the remaining information. You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of these fingerprints. Therefore, we find the fingerprints we marked must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

The remaining information contains Texas driver’s license and Texas motor vehicle record information subject to section 552.130 of the Government Code. This section provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *See* Gov’t Code § 552.130(a)(1), (2). Accordingly, we find the Texas driver’s license and Texas motor vehicle record information we marked must be withheld under section 552.130 of the Government Code.

In summary, the department may withhold the arrestee’s social security number under section 552.147 of the Government Code. With the exception of the remaining basic information, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. The department must withhold the records we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The fingerprints we marked must be withheld under section 552.101 in conjunction with section 560.003 of the Government Code. The Texas driver’s license and Texas motor vehicle record information we marked must be withheld under section 552.130 of the Government Code. The remaining information must be released.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 417792

Enc. Submitted documents

c: Requestor
(w/o enclosures)