



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2011

Ms. Tiffany Bull
Assistant City Attorney
Legal Division
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2011-13538

Dear Ms. Bull:

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# 430551 (Arlington Police Department Reference No. 4535).

The Arlington Police Department (the "department") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under section 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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. This section encompasses information protected by other statutes, such as chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas 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 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to a person's current involvement with the criminal justice system. *See Gov't Code* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find the information we have marked constitutes CHRI. Thus, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]”¹ *Gov't Code* § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

¹ Although you quote section 552.108(a)(1), we assume from the substance of your argument that you intended to assert section 552.108(b)(1).

You state release of undercover officers' identities would interfere with law enforcement and crime prevention because it would reveal the true identities of officers who have infiltrated different criminal organizations, thereby eliminating the officers' ability to detect crime. Based on your representations and our review, we agree the release of the identities of the undercover officers in the submitted report would interfere with law enforcement. *See* Open Records Decision Nos. 456 at 2 (1987) (statutory predecessor to section 552.108 protected information that, if revealed, might endanger life or physical safety of law enforcement personnel), 211 at 4 (1978) (statutory predecessor protected identities of members of Attorney General's Organized Crime Task Force engaged in undercover narcotics work). Therefore, the department may withhold the identities of the undercover officers in the submitted report under section 552.108(b)(1) of the Government Code. However, the department has failed to demonstrate that any portion of the remaining information would interfere with law enforcement. Accordingly, the remaining information may not be withheld under section 552.108(b)(1).

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]" Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We note the submitted information contains the requestor's driver's license number, which is generally confidential with respect to the general public under section 552.130. However, because section 552.130 protects personal privacy, the requestor has a right to his own driver's license number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We have marked motor vehicle record information pertaining to individuals other than the requestor that the department must withhold under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The department may withhold the identities of undercover officers under section 552.108(b)(1). The department must withhold the information we have marked under section 552.130. The remaining information must be released to the requestor.²

²We note the information to be released contains social security numbers, including the requestor's. 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b). As noted, the requestor has a right to his own information under section 552.023. However, should the department receive another request for this information from a different requestor, the department is authorized to withhold the requestor's social security number without seeking a decision from this office.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 430551

Enc. Submitted documents

c: Requestor
(w/o enclosures)