



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2011

Ms. Judith N. Benton  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2011-13751

Dear Ms. Benton:

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# 430906 (LGL-11-923).

The City of Waco (the "city") received a request for a copy of the offense/incident report for a specified incident, including any supplemental reports. You inform us the city has released some of the requested information. You claim 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(a)(1) 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 a criminal investigation which is still ongoing. Based on your representations and our review, we conclude release of the information you have highlighted under section 552.108(a)(1) would interfere with the detection, investigation, or prosecution of crime. *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). Accordingly, we agree section 552.108(a)(1) is generally applicable to the highlighted information.

We note, however, you have highlighted the social security number of the arrestee. 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). Basic information refers to the information held to be public in *Houston Chronicle* and includes an arrestee's social security number. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, the city may not withhold the arrestee's social security number under section 522.108(a)(1) of the Government Code. Thus, with the exception of the arrestee's social security number, the city may generally withhold the information you have highlighted under section 552.108(a)(1).

In this instance, the requestor is an investigator with the Enforcement Division of the Texas Lottery Commission (the "commission"). Section 466.201 of the Government Code states the commission is entitled to obtain criminal history record information ("CHRI") maintained by another law enforcement agency to assist in the investigation of any of the categories of persons enumerated in sections 466.201(a) and 466.201(b). Gov't Code § 466.201(a)-(b). Section 411.108 of the Government Code also provides that the commission is entitled to obtain CHRI maintained by the Texas Department of Public Safety ("DPS") that relates to a person who falls within one of the twelve categories of persons listed in subsection (a) of that section. *See id.* § 411.108(a). Likewise, under 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 [CHRI] maintained by that criminal justice agency[.]" *Id.* § 411.087(a)(2).

CHRI is defined as "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." *See id.* § 411.082(2). Thus, when read together, sections 466.201, 411.087, and 411.108 of the Government Code may grant the commission a right of access to the submitted information.

Upon review, we are unable to determine whether the commission is investigating an individual within one of the categories enumerated in section 466.201 or 411.108 of the Government Code. Accordingly, if the arrestee falls within one of the categories enumerated in either section 466.201 or 411.108, then the commission is authorized to obtain the CHRI pertaining to this individual contained in the submitted information. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, with the exception of the arrestee's social security number, the city may withhold the remaining highlighted information under section 552.108(a)(1) of the Government Code. If the arrestee does not fall within one of the categories enumerated in section 466.201 or section 411.108, then, with the exception

of the arrestee's social security number, the city may withhold the highlighted information under section 552.108(a)(1).

We note portions of the remaining information consist of Federal Bureau of Investigation ("FBI") numbers that do not pertain to the arrestee. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses information protected by chapter 411 of the Government Code, which deems confidential CHRI. As previously noted, CHRI is defined as "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." *Id.* § 411.082(2). 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. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. 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. *See* Gov't Code § 411.089(b)(1). Upon review, we find the FBI numbers at issue consist of CHRI generated by the FBI; therefore, the city must withhold the FBI numbers we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

In summary, if the arrestee falls within one of the categories enumerated in either sections 466.201 or 411.108 of the Government Code, then the commission is authorized to obtain the CHRI pertaining to this individual contained in the submitted information. However, with the exception of the arrestee's social security number, the city may withhold the remaining highlighted information under section 552.108(a)(1) of the Government Code. If the arrestee does not fall within one of the categories enumerated in section 466.201 or section 411.108, then, with the exception of the arrestee's social security number, the city may withhold the highlighted information under section 552.108(a)(1). The city must withhold the FBI numbers we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The remaining information must be released.<sup>2</sup>

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note the remaining information contains the arrestee's social security number. 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. Gov't Code § 552.147(b).

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](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/eb

Ref: ID# 430906

Enc. Submitted documents

c: Requestor  
(w/o enclosures)