



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2012

Mr. Robert G. Schleier, Jr.
For City of Kilgore
Law Office of Robert B. Schleier, Jr., P.C.
116 North Kilgore Street
Kilgore, Texas 75662

OR2012-03250

Dear Mr. Schleier:

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# 447505.

The City of Kilgore (the “city”), which you represent, received two requests from different requestors for information pertaining to two specified incidents. You state the city is not in possession of some of the requested information.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 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 narrative and supplemental portions of the submitted incident and arrest reports are related to a pending criminal investigation or prosecution. Based on your representations and

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism’d); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

our review, we conclude the release of this information 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). Thus, we find section 552.108(a)(1) is generally applicable to the information at issue.

As you acknowledge, 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*. See 531 S.W.2d at 186-87. Basic information includes, among other things, the details of the arrest and a detailed description of the offense. See *id.* at 179-80, 185-87; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note the city wishes to withhold the entire narrative portions of the submitted incident and arrest reports under section 552.108. However, the remaining information does not contain information sufficient to satisfy the requirement that a “detailed description of the offense” and the details of the arrest be released as basic information. See ORD 127. Thus, with the exception of a detailed description of the offense and the details of the arrest, the city may withhold the narrative and supplemental portions of the submitted incident and arrest reports under section 552.108(a)(1) of the Government Code.

We note that a portion of the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 and federal law.² Section 552.101 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 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 is confidential under federal and state law. CHRI means “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 obtained from the NCIC network or other states. See 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. See Open Records Decision No. 565 at 7 (1990); see also generally Gov’t Code ch. 411 subch. F. 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 subchapter F of chapter 411 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

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

justice purpose. *See 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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with subchapter F of chapter 411. Upon review, we find the remaining information we have marked constitutes CHRI for purposes of chapter 411. Thus, the city must withhold this information under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 and federal law.

We also note that portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country, or to a personal identification document issued by a state agency or another state or agency or a local agency authorized to issue an identification document. *Id.* § 552.130(a)(1), (3). Accordingly, the city must withhold the driver's license and personal identification document information we have marked under section 552.130 of the Government Code.

In summary, with the exception a detailed description of the offense and the details of the arrest, the city may withhold the narrative and supplemental portions of the submitted incident and arrest reports under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 and federal law. The city must withhold the driver's license and personal identification document information we have marked under section 552.130 of the Government Code. The city must release the remaining information.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

³We note the information being released includes 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 an attorney general decision under the Act. *See Gov't Code* § 552.147(b).

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,

A handwritten signature in black ink, appearing to read 'K. Conyer', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 447505

Enc. Submitted documents

c: Requestors
(w/o enclosures)