



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2012

Mr. Leonard V. Schneider
Counsel for the City of Huntsville
Liles Parker PLLC
521 North Sam Houston Parkway East, Suite 120
Houston, Texas 77060

OR2012-05737

Dear Mr. Schneider:

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# 451398 (ORR Nos. 12-005 & 12-006).

The Huntsville Police Department (the "department"), which you represent, received a request for arrest reports, incident reports, offense reports, book-in sheets, and mug shots pertaining to incident report number 11036786. A second request from the same requestor seeks arrest reports, incident reports, offense reports, book-in sheets, and mug shots pertaining to all 9-1-1 calls for service to a specified address on specified dates. You state the department has no information responsive to a portion of the second request.¹ You also state the department will withhold social security numbers pursuant to section 552.147(b)

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

of the Government Code.² You further state the department will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

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 section encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential 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 that 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 that the Department of Public Safety (“DPS”) maintains, except that 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. Thus, 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. Upon review, we find the information we have marked consists of CHRI that is confidential under section 411.083. Thus, the department must withhold the marked information under section 552.101 in conjunction with section 411.083 of the Government Code. However, you have not demonstrated how any portion of the remaining information consists of CHRI for purposes of chapter 411, and the department may not withhold any of the remaining information under section 552.101 on that basis.

You claim portions of the submitted information are excepted from disclosure under section 552.108(a)(1) of the Government Code, which excepts from disclosure “[i]nformation

²Section 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. *See id.* § 552.147(b).

³You argue Open Records Decision No. 127 (1976) allows the department to withhold social security numbers, driver’s license numbers, and other identification numbers, and identifying information of witnesses. However, Open Records Decision No. 127 is not an exception to disclosure. Rather, that decision dealt with information that is excepted from required public disclosure under section 552.108 of the Government Code and summarizes basic and arrest information under section 552.108(c) of the Government Code.

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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 11036786 pertains to an active criminal investigation and prosecution. Based on your representation, we conclude the release of the information you have indicated would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publishing 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 agree the department may withhold the information you have indicated within incident report number 11036786 under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. We note section 552.130 does not protect the state of issuance of a driver’s license. Upon review, we find portions of the submitted information consist of motor vehicle record information. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, you have not demonstrated how the remaining information you marked consists of motor vehicle record information, and it may not be withheld under section 552.130 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 in conjunction with section 411.083 of the Government Code. The department may withhold the information you have indicated within incident report number 11036786 under section 552.108(a)(1) of the Government Code. The department must withhold the motor vehicle record information we marked 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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a long, sweeping flourish extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 451398

Enc. Submitted documents

c: Requestor
(w/o enclosures)