



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2012

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2012-11156

Dear Ms. Cost:

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# 464880 (PIR# 12-2023).

The Texas Department of Public Safety (the "department") received a request for an offense report and/or probable cause warrant involving a named individual. You state some of the requested information has been released. You indicate the department has withheld criminal history record information ("CHRI") pursuant to a previous determination issued to the department in Open Records Letter No. 2001-2047 (2001), a driver's license number pursuant to section 552.130 of the Government Code, and a social security number pursuant to section 552.147 of the Government Code.¹ You claim other responsive information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

¹Open Records Letter No. 2001-2047 authorizes the department to withhold CHRI, as defined in section 411.082 of the Government Code and as maintained by the department under section 411.083 of the Government Code, under section 552.101 of the Government Code without the necessity of requesting a decision under the Act. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)). Section 552.130(c) of the Government Code authorizes a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without requesting a decision. *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide notice to requestor). 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 requesting a decision. *See id.* § 552.147(b).

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 exception encompasses federal and state laws that make CHRI confidential.² Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). You have marked the information the department seeks to withhold as CHRI. We agree the information we have marked constitutes CHRI the department must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. We conclude the remaining information you have marked does not constitute CHRI. Therefore, the remaining information may not be withheld under section 552.101 in conjunction with the federal or the state law and must be released.

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[.]” *Id.* § 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 have marked the information the department seeks to withhold under section 552.108. You state the release of the marked information would interfere with the investigation and prosecution of an ongoing criminal case. Based on your representations, we conclude the department may withhold the marked information under section 552.108(a)(1) of the Government Code.³ *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

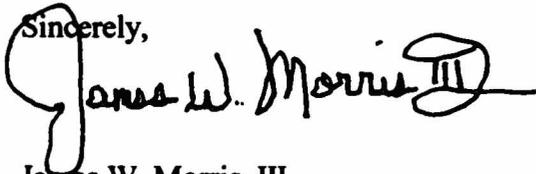
²CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2).

³As we are able to make this determination, we need not address your remaining claim for some of the marked information.

In summary, the department (1) must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code and (2) may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The remaining information at issue 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,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 464880

Enc: Submitted documents

c: Requestor
(w/o enclosures)