



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2012

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2012-13091

Dear Mr. Ohnemiller:

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# 462313.

The Midland Police Department (the "department") received a request for all information pertaining to a specified report number and a named individual involved in the report. You state you have released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.108 and 552.1175 of the Government Code.¹ We have considered the exceptions you claim 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."² Gov't Code § 552.101. Section 552.101 encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information

¹Although you raise section 552.117 of the Government Code, we note section 552.1175 is the proper exception to raise in this instance because the department does not hold the information at issue in an employment capacity.

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

Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the 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) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Upon review, we find the information we have marked consists of confidential CHRI. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 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[.]” *Id.* § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). 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). 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 (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).

You seek to withhold the serial number of a firearm pursuant to section 552.108(b)(1). You state that release of this information will interfere with law enforcement or prosecution by divulging firearm serial numbers that could be cloned onto illegal firearms used to commit crimes, or be falsely included in a missing weapons report. Upon review, we find you have

demonstrated that release of the serial number you have marked would interfere with law enforcement. Therefore, the department may withhold this information under section 552.108(b)(1) of the Government Code.

Section 552.1175 of the Government provides in relevant part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). The submitted documents contain information pertaining to a peace officer not employed by the department. Upon review, we find the department must withhold the information we have marked under section 552.1175 if the individual to whom this information concerns elects to restrict access to his information in accordance with section 552.1175(b). However, we note the remaining information at issue does not consist of a home address or telephone number, emergency contact information, social security number, or family member information. Thus, the department may not withhold any of the remaining information at issue under section 552.1175.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit, or a motor vehicle title or registration, issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1), (2). Accordingly, the department must withhold the information we have marked 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 section 411.083 of the Government Code, section 552.1175 of the Government Code, if the individual to whom this

information concerns elects to restrict access to his information in accordance with section 552.1175(b), and section 552.130 of the Government Code. The department may withhold the information you have marked under section 552.108(b)(1) of the Government Code. The remaining information must be released.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 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 462313

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the remaining information contains social security numbers. 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).