



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2012

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

OR2012-13614

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# 463694 (Waco Reference#: LGL-12-924 and LGL-12-925).

The Waco Police Department (the "department") received two requests from the same requestor for three specified police reports and all other reports regarding two specified individuals from January 1, 2011, to the present. You state you have released some of the requested information to the requestor. You claim some of the submitted information is 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) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 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 that the submitted information relates to a pending criminal investigation and prosecution. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of the information you have marked 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).

In this instance, however, the requestor is a representative of the Waco Housing Authority (the “housing authority”). The Texas Department of Public Safety (“DPS”) is required to provide criminal history record information (“CHRI”) to a noncriminal justice agency that is authorized to receive CHRI pursuant to a federal statute, executive order or state statute. *See* Gov’t Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded a local housing authority is a noncriminal justice agency authorized by federal statute to receive CHRI. *See* ORD 655 at 4. The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of applicants and tenants. Section 1437d(q)(1)(A) of title 42 of the United States Code provides “the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS also is authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency].” Gov’t Code § 411.087(a)(2). Thus, a housing authority also is authorized to obtain CHRI from a local criminal justice agency such as the city’s police department. *See* ORD 655 at 4; *see also* Gov’t Code §§ 411.083(b)(2), .087(a). CHRI consists of “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).

However, federal law limits the purposes for which a public housing authority may request CHRI. Federal law provides (1) public housing agencies may receive CHRI for adult applicants for public housing or for adult tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A). In this instance, we are unable to determine if the requestor is seeking the release of CHRI of applicants or tenants for purposes of applicant screening, lease enforcement, or eviction. Consequently, if information at issue pertains to an applicant or tenant of public housing and the requestor intends to use the CHRI contained in the information the department has marked to withhold under section 552.108 for purposes of applicant screening, lease enforcement, or eviction, we conclude the department must release information to this requestor that shows the types of allegations made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions under the Act). In that instance, the department may withhold the remaining information it has marked under section 552.108(a)(1) of the Government Code. However, if the department determines the

information at issue does not pertain to an applicant or tenant of public housing or the requestor does not intend to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, the department may withhold the information it has marked in its entirety under section 552.108(a)(1) of the Government Code.

The remaining information contains information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130. Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the department determines the information at issue pertains to an applicant or tenant of public housing and the requestor intends to use the CHRI in the information the department has marked for purposes of applicant screening, lease enforcement, or eviction, then the department must release the CHRI regarding an applicant or tenant of public housing. In that case, the department may withhold the remaining information it has marked under section 552.108(a)(1) of the Government Code. If the department determines the information at issue does not pertain to an applicant or tenant of public housing or the requestor does not intend to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, the department may withhold the information it has marked in its entirety under section 552.108(a)(1) of the Government Code. In either case, the department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.²

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

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

²We 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).

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 cursive script that reads "Kathryn R. Mattingly". The signature is written in black ink and is positioned above the typed name.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 463694

Enc. Submitted documents

c: Requestor
(w/o enclosures)