



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2012

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

OR2012-16111

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# 469988 (DPS PIR # 12-2844).

The Texas Department of Public Safety (the "department") received a request for police records pertaining to the requestor's client regarding a specified incident. You state some information has been released. You claim that the remaining 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)(1) 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 release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue, which you have marked, relates to an ongoing criminal case in which charges are pending against one or more individuals. Based upon your representation, we conclude release of the information you have marked will interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex.

Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes, such as section 411.083 of the Government Code which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center 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 National Crime Information Center 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. Open Records Decision No. 565 at 7 (1990); *see 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 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). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the Federal Bureau of Investigation (“FBI”) number we have marked constitutes CHRI generated by the FBI, which the department must withhold under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code and the department must withhold the information we have marked under section 552.101 in conjunction with federal law and chapter 411 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 be 'Thana Hussaini', written over a horizontal line.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/sdk

Ref: ID# 469988

Enc. Submitted documents

c: Requestor
(w/o enclosures)