



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2012

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2012-19272

Dear Ms. Middlebrooks:

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# 472790 (DPD PIR Nos. 2012-11634 and 2012-11887).

The Dallas Police Department (the "department") received a request for information pertaining to a specified internal affairs investigation and a request from a different requestor for all information pertaining to a specified case. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you indicate, and we agree, most of the information at issue was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2012-17145 (2012) and 2012-17760 (2012). In Open Records Letter No. 2012-17145, we ruled the department may withhold the information you marked under section 552.108

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

of the Government Code and must release the remaining information. In Open Records Letter No. 2012-17760, we noted the department redacted a driver's license number under section 552.130 of the Government Code pursuant to section 552.130(c), ruled the department may withhold the information you marked and indicated under section 552.108 of the Government Code, and ruled the department must release the remaining information. As we have no indication the law, facts, and circumstances on which Open Records Letter Nos. 2012-17145 and 2012-17760 were based have changed, the department must continue to rely on those rulings as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the remaining information you have submitted was not at issue in either of the previous rulings. Accordingly, we will address your arguments under sections 552.101, 552.103, 552.108, and 552.136 of the Government Code for this 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." Gov't Code § 552.101. This section encompasses laws that make criminal history record information ("CHRI") confidential. 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). 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 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, the department must withhold the CHRI you have marked in the remaining information under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

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 claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked in the remaining documents and indicated on the remaining CD relates to an ongoing criminal investigation conducted by the department. Based on your representations and our review, we find that release of the remaining information you have marked and indicated would interfere with the detection, investigation, or prosecution of crime. Therefore, section 552.108(a)(1) is applicable to the marked and indicated information. *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). Accordingly, the department may withhold the marked and indicated information under section 552.108(a)(1) of the Government Code.

Section 552.136 of the Government Code states, “Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). You inform us an employee’s identification number is used in conjunction with one additional digit to form the city credit union bank account number. Thus, we find the department must withhold the identification numbers you have marked in the remaining information under section 552.136 of the Government Code.

In summary, the department must continue to rely on Open Records Letter Nos. 2012-17145 and 2012-17760 as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. The department must withhold the CHRI you have marked in the remaining information under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. The department may withhold the marked and indicated information under section 552.108(a)(1) of the Government Code. The department must withhold the identification numbers you have marked in the remaining information under section 552.136 of the Government Code. The department must release the remaining information.

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 cursive script that reads "Lindsay E. Hale". The signature is written in dark ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 472790

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)