



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 20, 2012

Mr. Fred M. Barker  
First Assistant County Attorney  
Parker County  
1118 West Columbia Street  
Weatherford, Texas 76086

OR2012-20535

Dear Mr. Barker:

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# 474971.

The Parker County Sheriff's Office (the "sheriff's office") received a request for seventeen categories of information regarding a specified arrest, including the sheriff's office police, investigator, and special crimes unit general orders. You state you have released some of the requested information to the requestor. You further state the sheriff's office does not have information responsive to some of the categories of the request.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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: (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 information you have marked relates to pending criminal prosecutions. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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). Therefore, the sheriff's office may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the submitted portions of the sheriff's office's general orders manual and special operations manual contain information that if revealed could hinder the sheriff's office's law enforcement abilities. You state these materials contain information regarding the methods of investigations, required field techniques, and conduct restrictions of officers, and this information could be used by criminal offenders to thwart undercover officers' operations. You explain the Special Crimes Unit, specifically, relies heavily on undercover officers to conduct investigations and that these officers are particularly susceptible to harm. Based on your representations, we find release of the information we have marked would interfere with law enforcement. The sheriff's office may withhold this marked information under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated that release of any of the remaining information would interfere with law enforcement or crime prevention. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.108(b)(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.” Gov’t

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Code § 552.101. Section 552.101 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). 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. We note section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with the criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes confidential CHRI, which the sheriff’s office must withhold under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.<sup>3</sup> However, we find none of the remaining information you have marked constitutes confidential CHRI. Therefore, none of the remaining information may be withheld under section 552.101 on this basis.

You have marked a driver’s license number in the remaining information under section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1). Upon review, we find the sheriff’s office must withhold the driver’s license number you have marked in the remaining information under section 552.130 of the Government Code.

In summary, the sheriff’s office may withhold the information you have marked under section 552.108(a)(1) of the Government Code and the information we have marked under section 552.108(b)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code and the driver’s license number

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<sup>3</sup>We note the requestor can obtain his client’s own CHRI from DPS. Gov’t Code § 411.083(b)(3).

you have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>4</sup>

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](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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 474971

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the submitted information includes a driver's license number to which the requestor has a right of access as the authorized representative of the subject of the information at issue, which the sheriff's office would be required to withhold from the general public under section 552.130(a)(1) of the Government Code. Because section 552.130 protects personal privacy, the requestor has a right of access to his client's driver's license number under section 552.023 of the Government Code. See Gov't Code § 552.023(a) ("A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c). Thus, if the sheriff's office receives another request for this same information from a person who would not have a right of access to the present individual's private information, section 552.130(c) authorizes the sheriff's office to redact this driver's license number.