



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2013

Chief Deputy C. R. Servise
Burnet County Sheriff's Office
P.O. Box 1249
Burnet, Texas 78611

OR2013-10399

Dear Chief Deputy Servise:

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# 490811 (BCSO OR No. 2002).

The Burnet County Sheriff's Office (the "sheriff's office") received a request for the probable cause affidavit and police and arrest reports pertaining to a specified incident involving a named individual. You state the sheriff's office has released some of the requested information. You state the sheriff's office will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² 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." Gov't

¹We note 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. See Gov't Code § 552.147(b).

²You raise section 552.101 of the Government Code in conjunction with section 552.130 of the Government Code, however, section 552.130 constitutes its own exception of disclosure under the Act and is not raised in conjunction with section 552.101.

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. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI 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). We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement in the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information you have marked constitutes confidential CHRI. This information must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.³

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 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 the information you have marked relates to a pending criminal prosecution. Based on your representation and our review, we conclude 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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the sheriff’s office may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

You claim portions of the submitted information are excepted under section 552.108(b)(3) of the Government Code. Section 552.108(b)(3) provides, in pertinent part:

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

(b) An 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 is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation[.]

Gov't Code § 552.108(b)(3)(A). You state the information you have marked is an internal record prepared by the Burnet County District Attorney's Office in anticipation of or in the course of preparing for criminal litigation. Upon review, we find the information you have marked is subject to section 552.108(b)(3). Therefore, the sheriff's office may withhold the information you have marked under section 552.108(b)(3) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit or personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1), (3). Upon review, we find the sheriff's office must withhold the motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff's office may withhold the information you have marked under section 552.108(a)(1) and section 552.108(b)(3) of the Government Code. The sheriff's office must withhold the motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 490811

Enc. Submitted documents

c: Requestor
(w/o enclosures)