



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 12, 2013

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

OR2013-13930

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# 496054 (DPD PIR # 2013-06127).

The Dallas Police Department (the "department") received a request for information concerning a specified service number. You claim portions of the submitted information are 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 representative sample of information.<sup>1</sup>

Initially, we note the information relates to a sex offender subject to registration under chapter 62 of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information to the Texas Department of Public Safety ("DPS") sex offender registration database: the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a recent color

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number, driver's license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, the department must withhold or release the information that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b). *See* Open Records Decision Nos. 613 at 4 (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

Next, we note the information at issue includes documents that have been filed with a court. This information is expressly public under section 552.022(a)(17) of the Government Code and may not be withheld unless it is made confidential under the Act or other law. *See* Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential under the Act. Thus, the department may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. As you raise no further exceptions for this information, it must be released.

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[.]" Gov't Code § 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 concerns a pending criminal prosecution and the Dallas County District Attorney's Office states release of the information would jeopardize that prosecution. *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). Based

on these representations and our review, we conclude the department may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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. 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 that 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). 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. Upon review, we find a portion of the information you have marked, which consists of a copy of the department’s Miranda warning, does not constitute CHRI for purposes of subchapter F of chapter 411. Accordingly, the department may not withhold this information, which we have marked for release, under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. However, we conclude the remaining information you have marked constitutes CHRI for purposes of subchapter F of chapter 411 and the department must withhold this information under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. *Id.* § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold or release the information that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b) of the Code of Criminal Procedure. The department must release the marked court-filed documents

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments for portions of this information.

pursuant to section 552.022(a)(17) of the Government Code. The department may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code. With the exception of the information we have marked for release, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The department must withhold the marked information 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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eb

Ref: ID# 496054

Enc. Submitted documents

c: Requestor  
(w/o enclosures)