



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2014

Ms. Tiffany Bull
Assistant City Attorney
City of Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2014-03082

Dear Ms. Bull:

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# 514489 (Arlington PD Nos. 13542, 13541, 13535, 13669, 13670, 13671, 13681, 13682, 13683, 13552, 13672, 13673, 13675, 13676, 13553, 13678, 13679, 13680, 13684, 13685, 13686, 13687, 13688, 13689).

The Arlington Police Department (the "department") received twenty-four requests for information related to a specified offense. One requestor also seeks reports for a specified address during a specified time period. You state you have released some of the information. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you explain request numbers 13684, 13685, 13686, 13687, and 13689 are not requests for public information, but rather complaints or inquiries. A governmental body is not required to answer factual questions, conduct legal research, or create new information

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

in responding to a request for information under the Act. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). A governmental body must make a good-faith effort, however, to relate a request to responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the department has made a good faith effort to relate these requests to information the department maintains.

We note Exhibit F includes court-filed documents subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of “information that is also contained in a public court record” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code for the court-filed documents, this is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Therefore, the marked court-filed documents may not be withheld under section 552.108. However, you also raise section 552.1175 for this information, which does make information confidential under the Act. In addition, we note the court-filed documents contain information that is subject to section 552.101, which also applies to confidential information.² Accordingly, we will address sections 552.101 and 552.1175 for the court-filed documents and consider your arguments against disclosure of the remaining 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 . . . 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(a)(1) 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 Exhibits E and F pertain to a pending criminal investigation, and release of the information would interfere with the investigation. Based on your representation and our review, we conclude release of the information at issue 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). Thus, section 552.108(a)(1) is applicable to the remaining information in Exhibits E and F.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes, among other items, a detailed description of the offense, the location of the crime, and an arrestee's social security number, name, aliases, race, sex, age, occupation, address, police department identification number, and physical condition. See *id.* Thus, except for basic information, the department may withhold the remaining information in Exhibits E and F under section 552.108(a)(1) of the Government Code.

We note a portion of the information you state you released contains criminal history record information ("CHRI"). 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 section 411.083 of the Government Code which pertains to CHRI. CHRI generated by the National Crime Information Center ("NCIC") 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 NCIC 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 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 information we have marked constitutes CHRI; therefore, the department must withhold the information we have marked under section 552.101 in conjunction with section 411.083 and federal law.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." See *id.* § 560.003; see also *id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Upon review, we find the fingerprint we have marked constitutes a biometric identifier for purposes of

section 560.003 of the Government Code; thus, in releasing the court-filed documents, the department must withhold the marked fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code.

We note portions of the basic information, court-filed documents, and Exhibit G contain information subject to section 552.1175 of the Government Code. Section 552.1175 protects the home address, home telephone number, emergency contact information, social security number, date of birth, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). You state the individual at issue is a currently licensed peace officer; however, it is unclear whether this individual has elected to restrict access to his information in accordance with section 552.1175(b) of the Government Code. Accordingly, to the extent the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information you have marked in the basic information and court-filed documents, in addition to the information we have marked, under section 552.1175. Conversely, to the extent the peace officer at issue does not elect to restrict access to his marked information in accordance with section 552.1175(b), the department may not withhold the information under section 552.1175.³

In summary, except for basic information and the court-filed documents, the department may withhold Exhibits E and F under section 552.108(a)(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 sections 411.083 and 560.003 of the Government Code. In releasing basic information, the court-filed documents, and Exhibit G, the department must withhold the information you have marked, in addition to the information we have marked, under section 552.1175, if the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b). 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.texasattorneygeneral.gov/open/>

³Regardless of whether the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b), 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 under the Act. Gov't Code § 552.147(b).

[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,

A handwritten signature in black ink, appearing to read "Lee Seidlits". The signature is written in a cursive style with a large initial "L".

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 514489

Enc. Submitted documents

c: 20 Requestors
(w/o enclosures)