



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2014

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

OR2014-04606

Dear Ms. Armstrong:

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# 517086 (DPD ORR# 14-00093).

The Dallas Police Department (the "department") received a request for all information regarding a specified arrest. You claim some of the submitted information is excepted from disclosure under sections 552.102, 552.108, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

¹Although you do not specifically raise sections 552.102 and 552.117, you have marked information for which you appear to claim these exceptions. Accordingly, we will address sections 552.102 and 552.117, as these sections are mandatory exceptions to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

²We 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 that submitted to this office.

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 the information you have marked pertains to a pending criminal investigation and/or prosecution. Based upon this representation, we conclude section 552.108(a)(1) is applicable, and 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 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 information you have marked under section 552.108(a)(1) of the Government Code.³

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”⁴ 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. 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). 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 confidential CHRI. The

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

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

department must withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.⁵

Next, you raise section 552.102(a) of the Government Code. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the information you have marked under section 552.102 is held by the department in a law enforcement context. Thus, the information you have marked may not be withheld under section 552.102(a) of the Government Code.

Some of the remaining information may be subject to section 552.1175 of the Government Code. Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, 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). The information we have marked may pertain to a peace officer. Thus, to the extent this information relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code.⁶ However, if the individual whose information is at issue is not a licensed peace officer or does not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law; and (2) the information we have marked under section 552.1175 of the Government Code, to the extent this information relates to a peace officer who elects to restrict access to the information in accordance with

⁵We note an individual may obtain his own CHRI from DPS. *See Gov’t Code* § 411.083(b)(3).

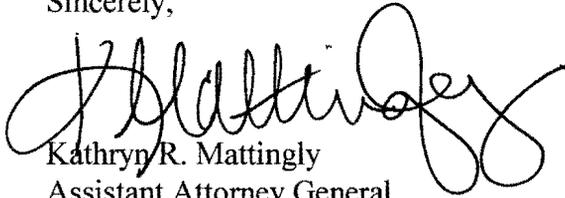
⁶Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, date of birth, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See Gov’t Code* § 552.1175(f).

section 552.1175(b). The department must release the remaining information to the requester.⁷

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 517086

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁷The information to be released includes the requestor's driver's license information and social security number, to which the requestor has a right of access and which are subject to sections 552.130(a) and 552.147 of the Government Code, respectively. See Gov't Code § 552.023. We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a) without the necessity of requesting a decision under the Act. *Id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e). 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. *Id.* § 552.147(b). Thus, if the department 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, sections 552.130(c) and 552.147(b) authorize the department to redact this driver's license information and social security number, respectively.