



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2014

Ms. Leticia Brysch  
City Clerk  
City of Baytown  
P.O. Box 424  
Baytown, Texas 77522-0424

OR2014-07666

Dear Ms. Brysch:

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# 521836 (City PIR No. 1988).

The City of Baytown (the "city") received a request for nine specified incident reports. You state you released some information. You state the city will redact the partial social security numbers you have marked pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim some of the remaining submitted information is excepted from disclosure under sections 552.101 and 552.108 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 . . . 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

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<sup>1</sup>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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

state the submitted information pertains to a pending prosecution. Based on this representation and our review, we conclude the release of this information 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, you may generally withhold the information you have marked under section 552.108(a)(1) of the Government Code.

In this instance, we note the requestor is a representative of the Housing Authority of the City of Baytown (the “housing authority”). The Texas Department of Public Safety (“DPS”) is required to provide criminal history record information (“CHRI”) to a noncriminal justice agency that is authorized to receive CHRI pursuant to a federal statute, executive order or state statute. *See* Gov’t Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded a local housing authority is a noncriminal justice agency authorized by federal statute to receive CHRI. *See* ORD 655 at 4. The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of applicants and tenants. Section 1437d(q)(1)(A) of title 42 of the United States Code provides “the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS also is authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency].” Gov’t Code § 411.087(a)(2). Thus, a housing authority also is authorized to obtain CHRI from a local criminal justice agency such as the department. *See* ORD 655 at 4; *see also* Gov’t Code §§ 411.083(b)(2), .087(a). CHRI consists of “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.” Gov’t Code § 411.082(2).

Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI “[n]otwithstanding any other provision of law.” 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over section 552.108 of the Government Code. *Cf. Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law).

Federal law limits the purposes for which a public housing authority may request CHRI. Federal law provides that (1) public housing agencies may receive CHRI for adult applicants for public housing or for adult tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A). In this instance, we cannot determine if the requestor is seeking the release of CHRI of applicants or tenants for purposes of applicant screening, lease

enforcement, or eviction. Accordingly, if the submitted information relates to an applicant or tenant of the housing authority and the city determines the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, we conclude the city must release information to this requestor that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the city may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code. However, if the city determines the information at issue does not relate to an applicant or tenant of the housing authority or that the housing authority does not intend to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then the city may withhold the information you marked under section 552.108(a)(1) of the Government Code. As our ruling in either instance would be dispositive of your remaining claim, we need not address it.

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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/tch

Ref: ID# 521836

Enc. Submitted documents

c: Requestor  
(w/o enclosures)