



March 16, 1999

Ms. Kristi A. Taylor  
Assistant City Attorney  
Neiman & Barnes, L.L.P.  
P.O. Box 777  
Lewisville, Texas 75067

OR99-0737

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122814.

The City of Lewisville received a request for information pertaining to a certain arrest. You seek to withhold under section 552.108 of the Government Code the identities of witnesses from the requested information.

Section 552.108, in pertinent part, excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

You advise that the case to which the requested information pertains resulted in the arrestee's being sentenced to deferred adjudication, and that release of the witnesses' identities could subject them to intimidation and possible harm and "could harm future cooperation between witnesses and law enforcement."

The applicability of section 552.108 to inactive criminal cases must be determined on a case-by-case basis. Open Records Decisions Nos. 297 (1981), 252 (1980) (treating predecessor provisions). Witness-identifying information may be withheld if disclosure “might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers.” *Id.* We note, however, that the names of complainants are “basic information” which may not be withheld under section 552.108. *See* Gov’t Code § 552.108(c) (section 552.108 does not except from public disclosure “information that is basic information about an arrested person, an arrest, or a crime”); *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); Open Records Decision No. 127 (1976).

Apart from the identity of the complainant, which may not be withheld under section 552.108, it appears that the only witness identity contained in the submitted information is already known to the arrestee. Under the circumstances, we do not believe that you have sufficiently demonstrated that release of this witness’s identity would interfere with law enforcement or otherwise fall within the protection of section 552.108. Therefore, you may not withhold this witness’s identity under section 552.108.

We do note, however, that the submitted information contains criminal history record information (“CHRI”) which must be withheld under section 552.101. Section 552.101 requires withholding, *inter alia*, information made confidential by statute. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the “DPS”) maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov’t Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). 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 the information except to another criminal justice agency for a criminal justice purpose, *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 the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, 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.

The submitted information also contains Texas driver's license and license plate information which must be withheld under section 552.130 of the Government Code. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from [public disclosure] if the information relates to:

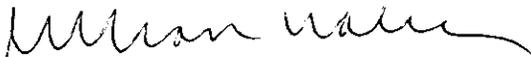
(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Except as noted above, you must release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ch

Ref:: ID# 122814

Enclosures: Submitted documents

cc: Mr. Richard Todd  
3829 Furneaux Lane  
Carrollton, Texas 75007  
(w/o enclosures)