



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2009

Ms. Eileen McPhee
Carls, McDonald, & Dalrymple, LLP
Barton Oaks Plaza 2
901 South Mopac Expressway, Suite 500
Austin, Texas 78746

OR2009-01124

Dear Ms. McPhee:

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# 333404.

The Georgetown Police Department (the "department"), which you represent, received a request for all calls for service and incident reports pertaining to thirteen specified addresses during October of 2008. You state you have released the majority of the requested information. You claim that the remaining 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) excepts from disclosure "[i]nformation 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." 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). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See Open Records Decision Nos. 474 (1987), 372 (1983)*. The custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement entity

that it wishes to withhold the information. You state that the Williamson County Attorney's Office objects to the release of the submitted information under section 552.108 because its release would interfere with pending criminal investigations and prosecutions. Based upon this representation, we conclude that 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public in *Houston Chronicle*). Thus, except for basic information, the department would generally be permitted to withhold the submitted information under section 552.108(a)(1) of the Government Code.

In this instance, however, the requestor is a representative of the Georgetown Housing Authority (the "housing authority"). The Texas Department of Public Safety (the "DPS") is required to provide criminal history record information ("CHRI") to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. Gov't Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded that a local housing authority is a noncriminal justice agency authorized by federal statute to receive CHRI. Open Records Decision No. 655 at 4 (1997). 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 chapter 42 of the United States Code provides that "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). To the extent the requestor is seeking CHRI regarding tenants of public housing, the housing authority is authorized to receive CHRI from the DPS. Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." Gov't Code § 411.087(a)(2). Accordingly, the housing authority is also authorized to receive CHRI from a local criminal justice agency, such as the department. *See* Open Records Decision No. 655 (1997); *see also* Gov't Code §§ 411.083(b)(2), 411.087(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).

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, the requestor is a representative of the housing authority and states the submitted documents will be used for the purpose of lease enforcement or eviction. Thus, if the submitted law enforcement records relate to a tenant of the housing authority and if the department determines that the requestor intends to use the CHRI for purposes of lease enforcement or eviction, then we conclude that the department must release information to this requestor that shows the types of allegations made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions. However, if the department determines that the submitted information does not relate to a housing authority tenant or that the housing authority does not intend to use the CHRI for purposes of lease enforcement or eviction, then the department may withhold the CHRI along with the remaining non-basic information under section 552.108 of the Government Code.¹

In summary, to the extent the submitted law enforcement records relate to a tenant of the housing authority, and the department determines that the requestor intends to use the CHRI for purposes of lease enforcement or eviction, the department must release any information to this requestor that shows the types of allegations made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions, in addition to basic information as required by section 552.108(c) of the Government Code. The remaining information may be withheld under section 552.108(a)(1) of the Government Code. Conversely, if the submitted law enforcement records do not relate to a tenant of the housing authority, or if the department determines that the requestor does not intend to use the CHRI for the purposes listed above, the department may withhold all but basic information under section 552.108 of the Government Code.

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.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free,

¹As our ruling is dispositive, we need not address your remaining arguments for this information.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "C. Alvarado". The signature is written in black ink and is positioned above the typed name.

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/cc

Ref: ID# 333404

Enc. Submitted documents

cc: Requestor
(w/o enclosures)