



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2009

Mr. Jeffrey T. Ulmann
Assistant City Attorney
Knight & Partners
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223 West Anderson Lane, Suite A-105
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OR2009-02026

Dear Mr. Ulmann:

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# 335093.

The City of Burnet (the "city"), which you represent, received two requests for any police or animal control records related to a particular address. The city claims the information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

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

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). As a general rule, section 552.108(a)(1) and section 552.108(a)(2) are applicable to two mutually exclusive types of law enforcement

information. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why 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). For example, section 552.108(a)(1) excepts from disclosure information that pertains to a specific pending criminal investigation or prosecution because release of such information would interfere the 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). In contrast, a governmental body that claims section 552.108(a)(2) must demonstrate the information relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

The city argues Exhibits B and C “did not result in a conviction or deferred adjudication.” This is an assertion under section 552.108(a)(2). However, the city also argues release of such information would interfere with “the detection, investigation, and prosecution of crime that has not resulted in a conviction or deferred adjudication.” Furthermore, the city asserts the information in Exhibit B is “currently under investigation.” This is an assertion under section 552.108(a)(1). Because the city provided this office with contradictory arguments, we find it failed to sufficiently demonstrate the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the city may not withhold Exhibits B and C under section 552.108 of the Government Code.

Next, the city asserts Exhibit D is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 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 information protected by other statutes. Chapter 411 deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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 that 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 (“DPS”) maintains, except that the 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). 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 CHRI 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* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we conclude Exhibit D does not contain CHRI for the purposes of chapter 411. Therefore, the city may not withhold Exhibit D under section 411.083.

We note the records include emergency medical service ("EMS") records that are subject to chapter 773 of the Health and Safety Code. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See* Open Records Decision No. 598 (1991). Section 773.091 provides in part the following:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Thus, except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-773.094. EMS records may be released to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf." *Id.* § 773.092(e)(4). The consent must be in writing, signed by the patient, authorized representative, or personal representative, and specify (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. Health & Safety Code § 773.093(a). Here, the requestor is an attorney for the person whose EMS records are at issue. Thus, except as specified by section 773.091(g), the city must withhold the marked EMS information under section 773.091, unless the requestor provides the city with written consent that meets the requirements of section 773.093(a). *Id.* §§ 773.092, .093; ORD 632.

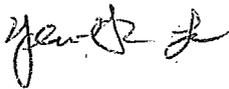
Lastly, some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides information relating to a Texas driver's license or motor vehicle title or registration is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, the city must withhold the Texas motor vehicle records information we marked under section 552.130 of the Government Code. However, the requestor has a right of access to his client's Texas driver's license number under section 552.023. *See* Gov't Code § 552.023 (person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests).

In summary, except as specified by section 773.091(g), the city must withhold the marked EMS information under section 773.091 of the Health and Safety Code, unless the requestor provides the city with proper written consent. The city must withhold the Texas motor vehicle records information we marked under section 552.130 of the Government Code. The remaining information must be released.¹

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, 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/eeg

¹We note the submitted information contains social security numbers. 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).

Ref: ID# 335093

Enc. Marked documents

c: Requestor
(w/o enclosures)
