



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2009

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston, Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2009-10937

Dear Ms. De La Garza:

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# 351597.

The Houston Police Department (the "department") received a request for three specified incident reports. You state that the department will release "the Public Release Information portion of the requested incident report[s]." You claim that the remainder of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that each of the submitted reports relates to an open criminal investigation. Based on your representations and our review of the submitted information, we conclude that release of the submitted 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 generally applicable to the submitted information.

We note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information

refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

In this instance, however, the requestor is a representative of the Omaha 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). Thus, to the extent the requestor is seeking CHRI regarding a tenant 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 states that he requested the information at issue for eviction purposes. Consequently, if the requested law enforcement records relate to a tenant of the housing authority, we conclude that the department must make available to the requestor the criminal history record information from the submitted offense reports, otherwise subject to section 552.108; that shows the type of allegation made and whether

¹We note that, although basic information includes a suspect's social security number, 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.

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). Thus, the department must release any CHRI of an adult tenant of public housing that is contained within the submitted information to this requestor in accordance with section 1437d(q)(1) of title 42 of the United States Code and Open Records Decision No. 655. *See also* 24 C.F.R. § 5.903 (describing public housing authorities' access to criminal records).

In summary, the department must release any CHRI of an adult tenant of public housing that is contained within the submitted information to this requestor in accordance with section 1437d(q)(1) of title 42 of the United States Code and Open Records Decision No. 655. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 351597

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²As this ruling is dispositive, we need not address your remaining arguments against disclosure.