



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 10, 2010

Mr. Adam C. Falco
Senior Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2010-18526

Dear Mr. Falco:

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# 402567.

The City of College Station (the "city") received a request for an incident report relating to a specified incident. You state the city has released some information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .302(e)(1)(A). You inform us that the submitted incident report relates to a criminal investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree that section 552.108(a)(2) is applicable to the submitted report.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). Basic information refers

to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of basic information, which you state has been released, the city may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

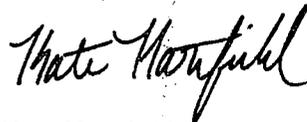
However, we note the requestor is a recruiter for the United States Marine Corps (the "Marine Corps") who indicates that he is conducting a background investigation of the individual listed as the suspect in the report for purposes of determining this individual's eligibility for enlistment. The United States Department of Defense (the "DoD") is authorized to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into armed services. 5 U.S.C. § 9101(b)(1)(C); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Marine Corps has a right to the criminal history record information ("CHRI") of state and local criminal justice agencies when its investigation is conducted with the consent of the individual being investigated. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(7) (DoD includes the Department of the Navy), 5041(a) (Marine Corps is part of the Department of the Navy). CHRI is defined as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release" but does not include "identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system" or "records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality." 5 U.S.C. § 9101(a)(2). Federal law provides that the Marine Corps' right of access to CHRI preempts state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law . . . of any State"). However, federal law also provides that the Marine Corps' right of access is contingent on receiving written consent from the individual under investigation for the release of such CHRI. *See id.* § 9101(c). Therefore, if the Marine Corps receives written consent of release from the individual at issue, the city must release CHRI to this requestor and may withhold the remaining information under section 552.108(a)(2) of the Government Code. Otherwise, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(2) 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,

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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Kate Hartfield".

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 402567

Enc. Submitted documents

c: Requestor
(w/o enclosures)