



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2011

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773

OR2011-05684

Dear Ms. Cohen:

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# 415557 (DPS OR No. 11-0397).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified incident. You state the department has released a portion of the responsive information to the requestor. You claim the remaining responsive information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the requested information pertains to an ongoing criminal case, and that release of the submitted information at this time would interfere with that case. Based on your

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

representations and our review, we conclude release of the submitted information at this time would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note that 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 front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, section 552.108(a)(1) of the Government Code is applicable to the submitted information.

In this instance, however, the requestor is a representative of the United States Air Force 802d Security Forces Squadron Investigation Section (the “Air Force”) and may have a right of access to some of the information being withheld. Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the department any criminal history record information [“CHRI”] maintained by the department about a person.” Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (providing the department shall grant criminal justice agencies access to CHRI). CHRI is defined as “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). However, section 411.083(c) provides the department may disseminate CHRI to a criminal justice agency “only for a criminal justice purpose.” *Id.* § 411.083(c). Thus, if the requestor in this instance is a “criminal justice agency,” then he is authorized to obtain CHRI from the department pursuant to section 411.089(a), but only for a criminal justice purpose. *See id.* §§ 411.083(c), .089(a).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice.” *Id.* § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Crim. Proc. Code art. 60.01(1).

In this case, the requestor is a security technician in the Air Force. We cannot determine whether he is a representative of a criminal justice agency or whether he intends to use the CHRI for a criminal justice purpose. Consequently, if the department determines this requestor is requesting the information on behalf of a criminal justice agency and intends to

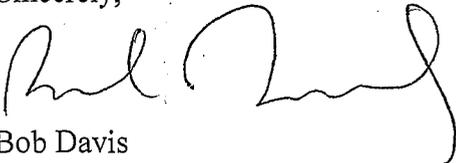
use the CHRI for a criminal justice purpose, we conclude the department must make available to the requestor the CHRI from the documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the department must also release basic information but may withhold the remaining information under section 552.108(a)(1) of the Government Code.

However, if the department determines this requestor is not requesting the information on behalf of a criminal justice agency or does not intend to use the CHRI for a criminal justice purpose, then the department must release only basic information and may withhold the remaining information under section 552.108(a)(1) of the Government Code. *See* Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute).

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 415557

Enc. Submitted documents

c: Requestor
(w/o enclosures)