



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2013

Ms. Angela Hahn
Records Coordinator
City of Brenham
P.O. Box 1059
Brenham, Texas 77834-1059

OR2013-05473

Dear Ms. Hahn:

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# 483500.

The City of Brenham (the "city") received a request for information related to a specified incident, including any related video footage. You state you have released some of the requested information. You state you do not maintain any of the requested video footage.¹ 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 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

¹In responding to a request for information under the Act, a governmental body is not required to disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Subsection 552.108(a)(1) protects information if its release would interfere with a particular pending criminal investigation or prosecution. Subsection 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See Gov't Code § 552.301(e)(1)(A)*; *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not inform us the submitted information relates to an open or pending criminal investigation. Thus, we find you have failed to demonstrate the release of the submitted information would interfere with a particular pending investigation. Accordingly, the city may not withhold any of the submitted information under section 552.108(a)(1) of the Government Code. Upon further review of your arguments, we find you have failed to demonstrate the release of the submitted information would interfere with law enforcement or prosecution efforts in general. Accordingly, the city may not withhold any of the submitted information under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov't Code § 552.101. This section encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations,

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

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 obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except 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 obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the city must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. As you raise no further exceptions against disclosure, the remaining information must be released to this requestor.³

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,

³We note the information being released contains a driver’s license number, Texas license plate number, and a social security number. Although this information is excepted from public disclosure under sections 552.130 and 552.147 of the Government Code, sections 552.130, and 552.147 protect personal privacy. Therefore, the requestor has a right of access under sections 552.023 of the Government Code to his own information. *See* Gov’t Code §§ 552.023(a). Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov’t Code § 552.130(c). Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. A governmental body may redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov’t Code § 552.147(b). Thus, if the city receives another request for this information from another requestor, then the city may withhold the requestor’s driver’s license number, Texas license plate number, and social security number pursuant to section 552.130(c), Open Records Decision No. 684, and section 552.147(b), without the necessity of requesting a decision from this office.

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 black ink, appearing to read 'VB', followed by a horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 483500

Enc. Submitted documents

c: Requestor
(w/o enclosures)