



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 2, 2014

Mr. Steven E. Meyer
Assistant City Attorney
City of Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2014-00128

Dear Mr. Meyer:

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# 509614 (APD Ref. No. 13003).

The Arlington Police Department (the "department") received a request for a specified police report. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. Gov't Code § 552.101. Section 552.101 encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). The requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the

department must withhold the submitted CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.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 claiming section 552.108(a)(1) must reasonably explain how and why the 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). You state the remaining information pertains to a pending criminal investigation. Based on your representation and our review, we conclude the release of the remaining 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information.

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

We note the requestor is a representative from the United States Army (the “Army”). We understand the individual who is the subject of the request for information is enlisted in the Army. The United States Department of Defense (the “DoD”) is authorized to perform background investigations of persons seeking acceptance or retention in the armed services. *See* 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 Army 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)(6) (DoD includes the Department of the Army). 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 the Army’s right of access to CHRI preempts state laws. *Id.* § 9101(b)(4) (section 9101 “shall apply notwithstanding any other provision of law . . . of any State”). We conclude the Army’s right of access under federal law preempts the state law you claim. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting a federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Federal law also provides the Army’s right of access is contingent on the request being made for eligibility or retention purposes, and on receiving written consent from the individual under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(c). In this instance, it is unclear if the request is for retention purposes. Further, we have no indication the individual under investigation provided the Army with a signed authorization for the release of the information at issue. Nevertheless, if the instant request was made for retention purposes, and if the Army provides a signed written consent for release from the individual being investigated, then the department must release CHRI from the information at issue to this requestor, and with the exception of basic information, may withhold the remaining information under section 552.108(a)(1) of the Government Code. Otherwise, with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the submitted CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. Additionally, if the request was made for retention purposes and the Army provides a signed written consent for release from the individual being investigated, the department must release CHRI from the report and, with the exception of basic information, may withhold the remaining information under section 552.108(a)(1). Otherwise, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a large circular flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 509614

Enc. Submitted documents

c: Requestor
(w/o enclosures)