



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2014

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Thockmorton Street, Third Floor
Fort Worth, Texas 76102-6311

OR2014-14853

Dear Mr. Trevino:

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# 534113 (Fort Worth ID# W034415, W034422, W034423, W034426, W034470, W034504).

The City of Fort Worth (the "city") received six requests from six different requestors for information relating to a specified incident at a specified address. One of the requests also asks for any other incident reports pertaining to the specified address. You state some information does not exist.¹ You state you will release some information. You inform us you will redact information under Open Records Decision No. 684 (2009).² You inform us you will redact information under section 552.147(b) of the Government Code.³ You inform

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

³Section 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. Gov't Code § 552.147(b).

us you will redact FBI numbers subject to section 411.083 of the Government Code and information subject to section 772.218 of the Health and Safety Code in accordance with previous determinations issued to the city.⁴ We understand you have redacted information pursuant to the previous determination issued in Open Records Letter No. 2014-05072 (2014).⁵ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 claiming section 552.108 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, and provide documentation demonstrating, the information in Exhibits C-1 through C-5 relates to an open and pending criminal investigation. *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). Based on your representation and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to Exhibits C-1 through C-5.

You raise section 552.108(a)(2) for portions of Exhibit C-6. 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. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate 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), .301(e)(1)(A). You state and provide documentation showing the submitted information in Exhibit C-6 relating to report numbers 08-036880, 08-35419, and 12-113888 pertain to investigations

⁴Open Records Letter No. 2013-22304 (2013) is a previous determination issued to the city authorizing the city to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law without requesting a ruling from this office. Open Records Letter No. 2011-15641 (2011) is a previous determination issued to the city authorizing it to withhold, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, an originating telephone number of a 9-1-1 caller furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general decision. Additionally, Open Records Letter No. 2011-15956 (2011) is a previous determination issued to the city authorizing it to withhold, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, an originating address of a 9-1-1 caller furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general decision.

⁵Open Records Letter No. 2014-05072 authorizes the city to withhold a driver’s license organ donor election under section 552.101 of the Government Code in conjunction with common-law privacy.

that concluded in results other than convictions or deferred adjudications. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold Exhibits C-1 through C-5 under section 552.108(a)(1) of the Government Code and the submitted information in Exhibit C-6 relating to report numbers 08-036880, 08-35419, and 12-113888 under section 552.108(a)(2) of the Government Code.⁶

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. See Open Records Decision No. 565 (1990). Furthermore, 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. However, section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. See *id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find you have failed to demonstrate how any portion of the remaining information you marked constitutes CHRI for purposes of chapter 411. Accordingly, none of the information you marked may be withheld under section 552.101 on that basis.

⁶As our ruling is dispositive, we need not address your remaining argument against disclosure.

You redacted some information under section 552.130(c) of the Government Code. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *See* Gov't Code. § 552.130(a)(1). Upon review, we find the city must withhold the motor vehicle record information we marked under section 552.130. However, the city may not withhold any of the remaining information under section 552.130.

In summary, with the exception of basic information, the city may withhold Exhibits C-1 through C-5 under section 552.108(a)(1) of the Government Code and the submitted information in Exhibit C-6 relating to report numbers 08-36880, 08-35419 and 12-113888 under section 552.108(a)(2) of the Government Code. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/ds

Ref: ID# 534113

Enc. Submitted documents

c: Requestor
(w/o enclosures)