



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 6, 2015

Mr. Caleb Thornton
Assistant County Attorney
Open Records Division
Montgomery County
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2015-06502

Dear Mr. Thornton:

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# 558774 (ORR No. 15PIA045).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for records pertaining to a named individual since being incarcerated for a specified offense. You claim 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.

Initially, we note some of the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-02339 (2015). In that ruling we determined, with the exception of basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office may rely on Open Records Letter No. 2015-02339 as a previous determination and withhold the

identical information in accordance with that ruling.¹ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not previously requested and ruled upon by this office, we will address your remaining argument for the information not subject to Open Records Letter No. 2015-02339.

Next, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record[,]” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). The sheriff’s office seeks to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the sheriff’s office may not withhold the court-filed documents, which we have marked, under section 552.108. However, because section 552.101 of the Government Code protects information made confidential under law and section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will address the applicability of these sections to the court-filed document subject to section 552.022(a)(17) of the Government Code.² Further, we will address your argument against disclosure of the remaining information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, 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 the Montgomery Assistant District Attorney’s Office objects to the release of the submitted information because it pertains to a pending criminal prosecution. Based upon this representation, we conclude section 552.108(a)(1) is applicable, and the release of the information not subject to section 552.022(a)(17) of the Government Code would interfere

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

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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 information not subject to section 552.022(a)(17) of the Government Code.

However, we note 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 information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the sheriff’s office may withhold the information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *Id.* § 411.083(a); see also *id.* § 411.082(2) (defining CHRI). 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. See 28 C.F.R. § 20.21; Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. See ORD 565. Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (the “department”) maintains, except that the department 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 the department 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 ORD 565. Furthermore, any CHRI obtained from the department 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 Federal Bureau of Investigation (“FBI”) number we have marked constitutes CHRI that is confidential under section 411.083. Thus, the sheriff’s office must withhold the FBI number we have marked in the information subject to section 552.022(a)(17) under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

We note the court-filed documents contain information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the sheriff's office must withhold the driver's license information we have marked within the information subject to section 552.022(a)(17) of the Government Code under section 552.130 of the Government Code.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office may rely on Open Records Letter No. 2015-02339 as a previous determination and withhold the identical information in accordance with that ruling. With the exception of basic information, the sheriff's office may withhold the information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. In releasing the information subject to section 552.022(a)(17) of the Government Code, the sheriff's office must withhold the FBI number we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and the driver's license information we have 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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 558774

Enc. Submitted documents

c: Requestor
(w/o enclosures)