



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2015

Mr. Brandon S. Davis
Counsel for the City of Liberty
Fielder, Gunter & Davis
1517 Trinity Street
Liberty, Texas 77575

OR2015-09329

Dear Mr. Davis:

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# 563551.

The Liberty Police Department (the "department"), which you represent, received a request for records, including nineteen specific categories of information, pertaining to a specified arrest involving the requestor's named client. You state the department has provided some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the copy of the request for information, which we have marked, submitted with the responsive documents is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

Next, we note the submitted information includes a search warrant and a return and inventory form signed by a magistrate that are subject to section 552.022 of the Government Code. Section 552.022(a)(17) 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). Although you seek to withhold

this information under section 552.108 of the Government Code, 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 department may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. However, you claim portions of the information subject to section 552.022(a)(1) are subject to section 552.130 of the Government Code. As section 552.130 makes information confidential under the Act, we will consider its applicability to the information subject to section 552.022(a)(1). We will also address your arguments against disclosure for the remaining 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(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)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You seek to withhold the information submitted as Exhibits F and H under section 552.108. You have provided an affidavit from an assistant district attorney with the Liberty County District Attorney’s Office (the “district attorney’s office”) stating the information at issue pertains to an open investigation and release of the information could have an adverse effect on the district attorney’s office’s ability to prosecute the case. Based on the submitted representation and our review, we conclude release of the information at issue 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 information at issue.

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*. *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 department may withhold Exhibits F and H under section 552.108(a)(1) of the Government Code.¹

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

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

§ 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) 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, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC 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). 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 Federal Bureau of Investigation (“FBI”) number we have marked in Exhibit E constitutes CHRI the department must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

You seek to withhold portions of the information subject to section 552.022 and the information submitted as Exhibit E under sections 552.130 and 552.147 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a 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). Section 552.147(b) 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. *See id.* § 552.147(b). We note, however, the information you seek to withhold consists of the requestor’s client’s motor vehicle record information and social security number. We note sections 552.130 and 552.147 protect personal privacy. Accordingly, the requestor has a right of access to his client’s motor vehicle record information and social security number under section 552.023 of the Government Code and that information may not be withheld under sections 552.130 and 552.147 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

In summary, with the exception of basic information, the department may withhold Exhibits F and H under section 552.108(a)(1) of the Government Code. The department must

withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The department must release the remaining information.

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 cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 563551

Enc. Submitted documents

c: Requestor
(w/o enclosures)