



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 8, 2015

Ms. Judith N. Benton  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2015-13876

Dear Ms. Benton:

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# 570480 (LGL-15-103 Ref. No. W050528-041515).

The City of Waco (the "city") received a request for information related to a specified incident. You state you have released some information. You state you have redacted some information under section 552.147 of the Government Code.<sup>1</sup> You claim some of 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 representative sample of information.<sup>2</sup>

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,

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<sup>1</sup>Section 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. *See* Gov't Code § 552.147(b).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 submitted information pertains to a criminal case that is currently pending investigation and prosecution. Based on this representation, we conclude the 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). Accordingly, the information you have marked may generally be withheld under section 552.108(a)(1).

In this instance, however, we note the requestor is a representative of the Waco Public Housing Authority (the “housing authority”). The Texas Department of Public Safety (“DPS”) is required to provide criminal history record information (“CHRI”) to a noncriminal justice agency that is authorized to receive CHRI pursuant to a federal statute, executive order or state statute. *See* Gov’t Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded a local housing authority is a noncriminal justice agency authorized by federal statute to receive CHRI. *See* ORD 655 at 4. The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of applicants and tenants. Section 1437d(q)(1)(A) of title 42 of the United States Code provides “the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency].” Gov’t Code § 411.087(a)(2). Thus, a housing authority is also authorized to obtain CHRI from a local criminal justice agency, such as the Waco Police Department. *See* ORD 655 at 4; *see also* Gov’t Code §§ 411.083(b)(2), .087(a). CHRI consists of “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.” *Id.* § 411.082(2).

Federal law limits the purposes for which a public housing authority may request CHRI. Federal law provides that (1) public housing agencies may receive CHRI for adult applicants for public housing or for adult tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A). Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI “[n]otwithstanding any other provision of law.” *Id.* Based on this language, we conclude section 1437d(q)(1)(A) prevails over section 552.108 of the

Government Code. *Cf. Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). The requestor does not indicate whether she is requesting the information at issue for applicant screening, lease enforcement, or eviction purposes. Accordingly, if the submitted information relates to an applicant or tenant of the housing authority, and the city determines the requestor is requesting the information for applicant screening, lease enforcement, or eviction purposes, we find the city must release information to this requestor that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the city may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code. However, if the city determines the submitted information does not relate to an applicant or tenant of the housing authority or the requestor is not requesting the information for application screening, lease enforcement, or eviction purposes, then the city may withhold all of the information you have marked under section 552.108(a)(1) of the Government Code.

You state you will redact certain marked information pursuant to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude, in addition to the information you state you will redact, the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. However, if the city determines the submitted information relates to an applicant or tenant of the housing authority, and the requestor is requesting the information for applicant screening, lease enforcement, or eviction purposes, we find the city must release information to this requestor that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. The city must withhold the information you have marked and we have marked under section 552.130 of the Government Code. The remaining information must be released.

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<sup>3</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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](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 "Mili Gosar", with a long horizontal flourish extending to the right.

Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 570480

Enc. Submitted documents

c: Requestor  
(w/o enclosures)