



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2015

Ms. Delietrice Henry
Open Records Assistant
City of Plano
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2015-19357

Dear Ms. Henry:

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# 579596 (Plano ORR# SDER062315).

The Plano Police Department (the "department") received a request for information regarding a specified police report. You state the department has released some information to the requestor. 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 representative sample of information.¹

Initially, we note the submitted information contains the fingerprints of the individual who is the subject of the requested police report. 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. Section 552.101 encompasses section 560.003 of the Government Code, which provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.*

¹We assume that 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.

§ 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). However, section 560.002 provides that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the disclosure is made by or to a law enforcement agency for a law enforcement purpose[.]” *Id.* § 560.002(1)(C). The submitted information contains fingerprints subject to section 560.003. Although we understand the requestor, an examiner at the Federal Bureau of Investigation’s National Instant Criminal Background Check System (“NICS”), is a representative of a law enforcement agency, we are unable to determine if NICS is seeking the information at issue for a law enforcement purpose. Thus, if the requestor is seeking the information at issue for a law enforcement purpose, the requestor has a right of access to the submitted fingerprints. The general exceptions found in the Act, such as section 552.108 of the Government Code, cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993), 451 at 4 (1986). Accordingly, in the event the requestor is seeking the submitted information for a law enforcement purpose, the department must release the submitted fingerprints to the requestor pursuant to subsection 560.002(1)(C) of the Government Code. However, if the requestor does not intend to use the fingerprints for a law enforcement purpose, the fingerprints must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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 relates to a pending case, and release of that information would interfere with the investigation and prosecution of the crime. Based on your representations, we conclude the department has demonstrated 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).

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). 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 the basic information, you may generally withhold the remaining information under section 552.108(a)(1) of the Government Code.

We note the requestor may also have a right of access to some of the remaining information pursuant to chapter 411 of the Government Code. Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information maintained by the [Department of Public Safety] about a person.” *See* Gov’t Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Act of May 27, 2015, 84th Leg., R.S., ch. 1279, §24, 2015 Tex. Sess. Law Serv. 4337-4338 (Vernon) (to be codified as an amendment to Gov’t Code § 411.087(a)(2)). We note “criminal history record information” is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, in dictments, informations, and other formal criminal charges and their dispositions.” *See* Gov’t Code § 411.082(2). Thus, the remaining information in this instance contains “criminal history record information.” However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* § 411.083(c); Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4337-4338 (Vernon) (to be codified as an amendment to Gov’t Code § 411.087(b)); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent the requestor represents a “criminal justice agency,” the requestor is authorized to obtain criminal history record information from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov’t Code § 411.083(c); Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4337-4338 (Vernon) (to be codified as an amendment to Gov’t Code § 411.087(a)(2)).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” *Id.* § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the

Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Crim. Proc. Code art. 60.01(1).

Although it appears NICS is engaged in the administration of criminal justice for purposes of chapter 411, we cannot determine whether the requestor intends to use the criminal history record information for a criminal justice purpose. Consequently, if the department determines the requestor intends to use the criminal history record information for a criminal justice purpose, we conclude the department must make available to the requestor the criminal history record information from the documents 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* ORD 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of the basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. However, if the department determines the requestor does not intend to use the criminal history record information for a criminal justice purpose, then the requestor does not have a right of access to the submitted criminal history record information pursuant to chapter 411. In that case, with the exception of the basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, in the event the requestor is seeking the submitted information for a law enforcement purpose, the department must release the submitted fingerprints to the requestor pursuant to subsection 560.002(1)(C) of the Government Code. However, if the requestor does not intend to use the fingerprints for a law enforcement purpose, the fingerprints must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of Government Code. If the department determines the requestor intends to use the criminal history record information for a criminal justice purpose, we conclude the department must make available to the requestor the criminal history record information from the documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, with the exception of the basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. If the department determines the requestor does not intend to use the CHRI for a criminal justice purpose, with the exception of the basic information, which must be released, 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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 579596

Enc. Submitted documents

c: Requestor
(w/o enclosures)