



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2015

Ms. Linda Pemberton
Paralegal
City of Killeen
P. O. Box 1329
Killeen, Texas 76540-1329

OR2015-14096

Dear Ms. Pemberton:

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# 571225 (PIR No. W016196).

The Killeen Police Department (the "department") received a request for records related to a named person during a specified time period. 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 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)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the Bell County District Attorney's Office advises the prosecution's case is open and pending and objects to the release of the information at issue. Based on this representation, we conclude the release of the submitted 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

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 submitted information.

Section 552.108, however, 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; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

We note the requestor in this case is with the Texas Department of Family and Protective Services. Accordingly, the department has the discretion to release the submitted information to this requestor pursuant to an intergovernmental transfer. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. See Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 at 8 (1997), 567 at 2 (1990), 561 at 6 (1990). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. See Open Records Decision No. 516 at 4 (1989). However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. See Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); see also Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

We note section 552.108 of the Government Code is not a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Thus, pursuant to the intergovernmental transfer doctrine, the department has the discretion to release the submitted information that is subject to section 552.108 to the requestor. However, should the department choose not to exercise its discretion under the interagency transfer doctrine, the department may, with the exception of basic information, withhold the submitted information under section 552.108(a)(1) of the Government Code. Furthermore, release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for the purposes of section 552.007 of the Act. See Attorney General Opinion Nos. H-917 at 1 (1976), H-242 at 4 (1974); see also Gov't

Code §§ 552.007, .352. Therefore, the department does not waive its interests in withholding this information by exercising its discretion under the interagency transfer doctrine. We note, however, some of the submitted information is subject to section 552.101 in conjunction with section 411.083 of the Government Code and section 552.130 of the Government Code, which have access provisions governing release of information.¹ Consequently, because information subject to these exceptions must be withheld if the department chooses to release the submitted information pursuant to the intergovernmental transfer doctrine, we must consider the applicability of these sections to the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center 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.” *Id.* § 411.082(2). Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center 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). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapter F of chapter 411 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 only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. Upon review, we find the information we have marked constitutes confidential CHRI for purposes of chapter 411 . Therefore, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.130 of the Government Code 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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

release. Gov't Code § 552.130(a). Upon review, we find the department must withhold the information we marked under section 552.130 of the Government Code.

In summary, with the exception of the information we have marked that must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and section 552.130 of the Government Code, the department has the discretion to release the submitted information to the requestor under the intergovernmental transfer doctrine. Should the department choose not to exercise its discretion under the intergovernmental transfer doctrine, then, with the exception of basic information, the department may withhold the submitted 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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/eb

Ref: ID# 571225

Enc. Submitted documents

c: Requestor
(w/o enclosures)