



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2016

Ms. Ileana Fernandez
Assistant City Attorney
City of Mesquite
P. O. Box 850137
Mesquite, Texas 75185-0137

OR2016-27901

Dear Ms. Fernandez:

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# 638557.

The Mesquite Police Department (the "department") received three requests for records pertaining to a specified case number. You state the department will release some information to the requestors. You claim the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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). Generally, a governmental body claiming section 552.108(a)(1) must 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, 710 (Tex. 1977). You state the submitted information relates to a pending investigation. Based upon 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, 186-87 (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, 560-61 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, we note, and you acknowledge, section 552.108 of the Government Code 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 186-87; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the arrestee's social security number. See ORD 127 at 3-4. Thus, with the exception of basic information, which you state you will release, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

However, the first requestor states she is a representative of the United States Army (the "army") and may have a right of access to some of the information at issue.² Section 411.089(a) of the Government Code provides "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety ("DPS")] any criminal history record information [{"CHRI"}] maintained by [DPS] about a person." See Gov't Code § 411.089(a). In addition, section 411.087(a)(2) of the Government Code provides the following:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as "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." See *id.* § 411.082(2). However, a criminal justice agency that receives CHRI 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), .087(b); see also Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent the first requestor represents a "criminal justice agency," the requestor is authorized to obtain CHRI 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), .087(a)(2).

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

²When referring to the first requestor, this office is referring to the requestor from the department's October 6, 2016, request for ruling from this office.

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 [CHRI].” *Crim. Proc. Code art. 60.01(1).*

In this case, as noted above, the first requestor is a representative of the army. We cannot determine whether she is a representative of a criminal justice agency or whether she intends to use the CHRI for a criminal justice purpose. Accordingly, we must rule conditionally. If the department determines the first requestor is requesting the information on behalf of a criminal justice agency for purposes of chapter 411 of the Government Code and seeks the CHRI for a criminal justice purpose, we conclude the department must make available to the first requestor any CHRI 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. Although you also seek to withhold the information at issue under section 552.108 of the Government Code, we note a specific statutory right of access prevails over the general exceptions to disclosure found in the Act, such as section 552.108. *See Open Records Decision No. 451 (1986)* (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, except for the basic information, the department may withhold the remaining information from the first requestor under section 552.108(a)(1) of the Government Code. However, if the department determines the first requestor either is not a representative of a criminal justice agency for purposes of chapter 411 of the Government Code or does not seek access to the information at issue for a criminal justice purpose, then the first requestor does not have a right of access to the submitted CHRI pursuant to chapter 411. In that instance, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

As noted above, basic information includes the arrestee’s social security number. Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Public Information Act (the “Act”). *Gov’t Code § 552.147.* Section 552.147 protects privacy. We note the second requestor may have a right of access to her spouse’s social security number as his authorized representative.³ As such, we rule conditionally. If the second requestor is acting as the authorized representative of her spouse, the requestor has a right of access to her spouse’s

³When referring to the second requestor, this office is referring to the requestor from the department’s October 10, 2016 request for ruling from this office.

information and it may not be withheld from her under section 552.147. *See generally id.* § 552.023(b) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect person's privacy interests). If, however, the second requestor is not acting as the authorized representative of her spouse, the department may withhold the social security number at issue under section 552.147 from the second requestor. The department may withhold the social security number contained in the basic information from the remaining requestors under section 552.147.

In summary, if the department determines the first requestor has a right of access to CHRI in the submitted information pursuant to subchapter F of Chapter 411 of the Government Code, the department must release CHRI from the information at issue to the first requestor; with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. With the exception of basic information, the department may withhold the submitted information from the remaining requestors under section 552.108(a)(1) of the Government Code. In releasing the basic information, however, if the second requestor is not acting as the authorized representative of her spouse, the department may withhold the social security number at issue from the second requestor under section 552.147 of the Government Code. In either event, the department may withhold the social security number contained in the basic information from the remaining requestors under section 552.147 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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 638557

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)