



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 10, 2017

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

OR2017-05068

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# 648575 (ID# W020986).

The City of Killeen (the "city") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to the submitted information.

We note, 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per*

curiam, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant and a detailed description of the offense. See ORD 127. Thus, with the exception of the basic information, which must be released, the city may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

However, we note the requestor is a representative of the United States Army (the "Army") and, thus, may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides, "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (the "DPS")] any criminal history record information [{"CHRI"}] maintained by the [DPS] 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 [DPS CHRI] maintained by the [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). Thus, the submitted information contains CHRI. However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may receive such information only 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 CHRI). Thus, to the extent the 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(b).

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 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).

As previously noted, the requestor is a representative of the Army. Although it appears the Army is engaged in the administration of criminal justice under chapter 411, we cannot determine whether the requestor intends to use the CHRI for a criminal justice purpose. Consequently, if the city determines the requestor intends to use the CHRI for a criminal justice purpose, then the city must release any CHRI from the submitted information. Although the city raises section 552.108 of the Government Code for this information, we note a statutory right of access generally prevails over exceptions to public disclosure under the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, except for the basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, if the city determines the requestor does not intend to use the CHRI for a criminal justice purpose, then the 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, which must be released, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual’s privacy. In this instance, the city seeks to withhold the entirety of the remaining information under section 552.101 in conjunction with common-law privacy. However, the city has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the entirety of the remaining information under section 552.101 of the Government Code on that basis. However, in this instance, portions of the basic information meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, in releasing the basic information, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated any of the remaining basic information is highly intimate or embarrassing and of no legitimate public interest; thus, none of the remaining basic information may be

withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the city determines the requestor intends to use the CHRI for a criminal justice purpose, then the city must release any CHRI from the submitted information; with the exception of basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, if the city determines the requestor does not intend to use the CHRI for a criminal justice purpose, then, with the exception of basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing basic information, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 Buchanan
Assistant Attorney General
Open Records Division

EB/eb

Ref: ID# 648575

Enc. Submitted documents

c: Requestor
(w/o enclosures)