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ATTORNEY GENERAL OF TEXAS

December 12, 2017

Ms. Celeste Baltierra
Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2017-28176

Dear Ms. Baltierra:

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# 687668 (CCPD File No. HLac1).

The Corpus Christi Police Department (the "department") received a request for reports pertaining to a specified type of incident from a specified time period. We understand the department will redact certain information pursuant to Open Records Letter No. 2016-00831 (2016).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.147, and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed 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." Gov't Code § 552.101. This section encompasses laws that make criminal history record

¹Open Records Letter No. 2016-00831 is a previous determination authorizing the department to withhold the dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

²Although you do not raise sections 552.130 or 552.147 of the Government Code in your brief, we understand you to raise these exceptions based on your markings.

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. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 and subchapter F 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 not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Accordingly, the department must withhold the FBI number you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 [of the Government Code] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You state release of the undercover officers’ identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the department must withhold the identifying information of the undercover officers, which we marked, under section 552.152 of the Government Code.³ However, upon review, we find you have not demonstrated release of any of the remaining information would subject an employee of the department to a substantial threat of physical harm. Thus, the department may not withhold any of the remaining information under section 552.152 of the Government Code.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” *Id.* § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You seek to withhold some of the remaining information under section 552.108(b)(1). You state release of the remaining information you marked “would interfere with law enforcement and crime prevention by revealing sensitive assignments and law enforcement methods, techniques, and strategies.” Based on your representations and our review, we find release of some of the information at issue would interfere with law enforcement. Accordingly, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate the release of the remaining information would interfere with law enforcement or crime prevention. Therefore, the department may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.130 of the Government Code 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 the department must withhold the information you marked under section 552.130 of the Government Code.

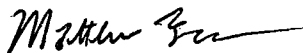
Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). Accordingly, the department may withhold the social security number we marked under section 552.147 of the Government Code.

In summary, the department must withhold the FBI number you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the information we marked under section 552.152 of the Government Code. The department may withhold the information we marked under section 552.108(b)(1) of the Government Code. The department must withhold the information you marked under section 552.130 of the Government Code. The department may withhold the social security number we marked under section 552.147 of the Government Code. The department must release the remaining information.

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/tdw

Ref: ID# 687668

Enc. Submitted documents

c: Requestor
(w/o enclosures)