

April 29, 2019

Mr. Gregory L. Grigg
Chief of Police
City of Deer Park
2911 Center Street
Deer Park, Texas 77536-4942

OR2019-11238

Dear Mr. Grigg:

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# 762355 (ORR# 2019-0373).

The Deer Park Police Department (the “department”) received a request for information related to a specified incident involving a named individual. The department states it will redact public citizens’ dates of birth pursuant to Open Records Letter No. 2016-07970 (2016).¹ The department states it is releasing some of the requested information. The department claims some of the submitted information is excepted from disclosure under sections 552.552.108, 552.130, and 552.147 of the Government Code. We have considered the exception the department claims 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 explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte*

¹Open Records Letter No. 2016-07970 authorizes the department to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

Pruitt, 551 S.W.2d 706 (Tex. 1977). The department states the submitted information relates to a pending criminal prosecution. Based upon this representation, we conclude release of the information the department marked will 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). Accordingly, the department may generally withhold the information it marked under section 552.108(a)(1) of the Government Code.

However, we note the requestor is a representative of the Federal Bureau of Investigation's National Instant Criminal Background Check System ("NICS") and may have a right of access to some of the submitted information. 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 the DPS about a person. *See Gov't Code* § 411.089(a); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides, in part:

(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). We note 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). 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 CHRI). Section 411.082 defines a "criminal justice agency" as including "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[.]" *Gov't Code* § 411.082(3)(A). "Administration of criminal justice" has the meaning assigned to it by article 66.001 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 66.001 defines "administration of criminal justice" as the "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. 66.001(1).

Although it appears the NICS 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 department determines the requestor intends to use the CHRI for a criminal justice purpose, we conclude the department must make CHRI available to the requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the department may withhold the remaining information it marked under section 552.108(a)(1) of the Government Code. However, if the department 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 CHRI pursuant to chapter 411 and the department need not release CHRI to this requestor.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, 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 release. *See* Gov’t Code § 552.130. Accordingly, the department must withhold the motor vehicle record information it 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. Gov’t Code § 552.147(a). Accordingly, the department may withhold the social security number it marked under section 552.147 of the Government Code.

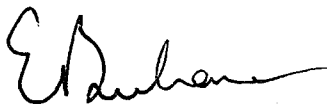
In summary, the department may generally withhold the information it marked under section 552.108(a)(1) of the Government Code; however, if the department determines the requestor intends to use the CHRI for a criminal justice purpose, then the department must make CHRI available to the requestor. The department must withhold the motor vehicle record information it marked under section 552.130 of the Government Code. The department may withhold the social security number it 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,

A handwritten signature in black ink, appearing to read "Emily Buchanan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Emily Buchanan
Attorney
Open Records Division

EB/mo

Ref: ID# 762355

Enc. Submitted documents

c: Requestor
(w/o enclosures)