



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2019

Mr. Alexander Garcia
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2019-12739

Dear Mr. Garcia:

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# 765131 (CCPD File No. LRiv10).

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified incident. You state the department will release some of the requested information. Additionally, you state the department will withhold dates of birth in accordance with Open Records Letter No. 2016-00831 (2016).¹ You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code. 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."² Gov't

¹Open Records Letter No. 2016-00831 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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code § 552.101. This section encompasses information protected by other statutes, such as laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (the “NCIC”) 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). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC 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)*. *See generally* Gov’t Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See* Gov’t Code § 411.083(a). 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). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Accordingly, the department must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 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.

Gov’t Code § 552.152. You inform us portions of the information at issue relate to undercover police officers. You state release of this information would subject these officers to a substantial threat of physical harm. Based on your representations and our review, we find you have demonstrated the release of the information at issue would subject the officers at issue to a substantial threat of harm. Thus, the department must withhold the information you have marked that identifies undercover police officers of the department under section 552.152.³

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

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

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) exempts 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) exempts 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 contend disclosure of the remaining information you have marked would reveal sensitive assignment and law enforcement methods, techniques, and strategies, which would interfere with law enforcement and crime prevention. Based on your arguments and our review of the information at issue, we agree release of the remaining information you have marked would interfere with law enforcement. Accordingly, the department may withhold the remaining information you have marked under section 552.108(b)(1).

We understand the department will withhold the motor vehicle record information you have marked pursuant to section 552.130(c) of the Government Code.⁴ Section 552.130 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 additional information we have marked under section 552.130.

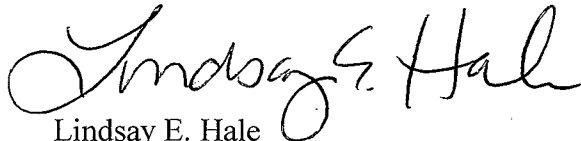
⁴Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

In summary, the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The department must withhold the information you have marked that identifies undercover police officers of the department under section 552.152 of the Government Code. The department may withhold the remaining information you have marked under section 552.108(b)(1) of the Government Code. The department must withhold the additional information we have marked under section 552.130 of the Government Code. The department must release the remaining information.⁵

Finally, you request that this office issue a previous determination that would authorize the department to certain information under section 552.152 without the necessity of seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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⁵We note the requestor has a right of access beyond that of the general public to some of the information being released that pertains to her client. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Accordingly, if the department receives another request for this information from an individual other than this requestor or her client, the department must again seek a ruling from this office.

Ref: ID# 765131

Enc. Submitted documents

c: Requestor
(w/o enclosures)