



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Ms. Erin Ham
Deputy City Clerk
City of Wichita Falls
P O Box 1431
Wichita Falls, Texas 76307

OR2019-36292

Dear Ms. Ham:

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# 803072 (City ID# 947).

The City of Wichita Falls (the "city") received a request for information pertaining to a specified arrest of a named individual. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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). 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 (Tex. 1977). The city states the submitted information pertains to an active criminal investigation or prosecution. Based on 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 (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). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, we note 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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). 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)(1) of the Government Code.

We note the requestor is a recruiter for the United States Navy (the "Navy"). We understand the individual who is the subject of this request for information is a potential enlistee in the Navy. The United States Department of Defense (the "DoD") is authorized to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into the armed services. See 5 U.S.C. § 9101(b)(1)(C); see also *id.* § 9101(a)(6)(A) (DoD is covered agency for purposes of section 9101). The Navy has a right to the criminal history record information ("CHRI") of state and local criminal justice agencies when its investigation is conducted with the consent of the individual being investigated. See *id.* § 9101(b)(1), (c); see also 10 U.S.C. § 111(b)(7) (DoD includes Department of Navy). CHRI is defined as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release[]" but does not include "identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system[]" or "records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality." 5 U.S.C. § 9101(a)(2).

Federal law provides the Navy's right of access to CHRI preempts state laws. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law . . . of any State"). Thus, we conclude the Navy's right of access under federal law preempts the state law the city claims here. See *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law); see also *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, federal law also provides the Navy's right of access to CHRI is contingent on receiving written consent from the individual under investigation for the release of such CHRI. See 5 U.S.C. § 9101(c). In this instance, the individual at issue has given the Navy written consent for the release of the information at issue. Accordingly, the city must release CHRI from the submitted information pertaining to the individual at issue to the requestor. With the exception of the basic information, the city may withhold the remaining information under section 552.108(a)(1) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eb

Ref: ID# 803072

Enc. Submitted documents

c: Requestor
(w/o enclosures)