



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 21, 2020

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

OR2020-05607

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# 812819 (ORR# W030705).

The City of Killeen (the "city") received a request for case number 15-011874. The city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the city claims 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 information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The city states the submitted information pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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. Civ. 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 deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

We note, however, the requestor is an investigator with CACI International, Inc. (“CACI”), and indicates he is working with the Defense Counterintelligence and Security Agency (“DCSA”). CACI requests the information as part of a background investigation for a national security employment position. Executive Order Number 13869 transfers the responsibility of background investigations from the Office of Personnel Management to the Department of Defense (“DoD”). Executive Order No. 13869. The DSCA is a component of the DoD and is the primary federal entity responsible for conducting background investigation for the federal government. Exec. Order No. 13869, § 2(c)(i), (iii). As a component of a covered agency, the DSCA has a right of access to the criminal history record information (“CHRI”) of state and local criminal justice agencies when it receives the consent of the individual being investigated for release of such information. See 5 U.S.C. § 9101(b)(1), (c); *id.* § 9101(a)(6)(A) (defining “covered agency” to include DoD). 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 in the criminal justice system.” *Id.* § 9101(a)(2).

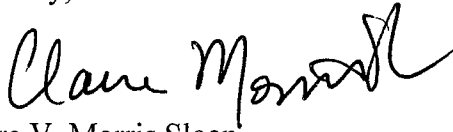
In this instance, the requestor states he is conducting a background investigation for a national security or public trust position and has submitted written consent from the individual under investigation for the release of the submitted information. Therefore, the requestor has a right of access to the CHRI pertaining to the named individual. Federal law provides DCSI’s right of access to CHRI preempts state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 “shall apply notwithstanding any other provision of law . . . of any State”); see also *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law); *Louisiana 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). Accordingly, the city must release the CHRI pertaining to the named individual to the requestor. 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.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 812819

Enc. Submitted documents

c: Requestor
(w/o enclosures)