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ATTORNEY GENERAL OF TEXAS

May 6, 2020

Mr. Will Austin Pruitt  
Counsel for the City of Sansom Park  
Law Office of Will A. Pruitt  
925 8th Avenue  
Fort Worth, Texas 76104

OR2020-12892

Dear Mr. Will Austin Pruitt:

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# 829921.

The City of Sansom Park (the "city"), which you represent, received a request for information related to specified report involving 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, 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 relates to an active criminal investigation, and release of the information would interfere with the detection, investigation, or prosecution of crime. Based upon this representation, we conclude the release of this information 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 this information.

However, we note 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*. 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, the city may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.

However, the requestor is a representative for the United States Navy (the “Navy”), and the named individual is enlisted in the Navy. The United States Department of Defense (the “DoD”) is authorized to perform background investigations of persons seeking acceptance or retention in the armed services. See 5 U.S.C. § 9101(b)(1)(A)(iii); see also *id.* § 9101(a)(6)(A) (DoD is a 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 the Department of the 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 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 common-law privacy and state confidentiality provisions, such as section 552.108(a)(1) of the Government Code. *Id.* § 9101(b)(4) (section 9101 “shall apply notwithstanding any other provision of law . . . of any State”); *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law); *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (federal agency acting within scope of congressionally delegated authority may preempt state regulation); see also U.S. CONST., art. VI, cl. 2 (Supremacy Clause); *Delta Airlines, Inc. v. Black*, 116 S.W.3d 745, 748 (Tex. 2003) (discussing federal preemption of state law). However, federal law also provides the Navy’s right of access is contingent on the request being made for eligibility or retention purposes, and 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, it is unclear if the individual at issue has submitted written consent for the release of the information at issue. Nevertheless, if the instant request was made for retention purposes, and if the Navy provides signed written consent for the release from the individual being investigated, then the city must release CHRI from the submitted information to the requestor. In that case, with the exception of basic information, the city

may withhold the remaining information under section 552.108(a)(1) of the Government Code. However, if the instant request was not made for retention purposes, or the Navy does not provide signed written consent for the release from the individual being investigated, then, with the exception of basic information, may withhold the submitted under section 552.108(a)(1) of the Government Code. In either case, the city must release basic 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 <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,

Jesse Harvey  
Assistant Attorney General  
Open Records Division

JHI/be

Ref: ID# 829921

Enc. Submitted documents

c: Requestor  
(w/o enclosures)