



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 16, 2020

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

OR2020-26136

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# 851799 (ORR #W033151).

The City of Killeen (the “city”) received a request for a report involving a named individual. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552 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 relates 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). Therefore, 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, the city may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

However, the requestor is a representative of the United States Army (the "Army") and may have a right of access to some of the information at issue. 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)(C); see also *id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Army 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)(6) (DoD includes the Department of the Army). 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 Army'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 Army's right of access under federal law preempts section 552.108 of the Government Code. See *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that 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) (noting a federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Federal law also provides the Army'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 whether the individual whose information is at issue is seeking retention in the armed services and whether the request is for retention purposes. Further, we are unable to determine whether the individual whose information is at issue provided the Army with a signed authorization for the release of the information at issue. Accordingly, if the request was for retention purposes and the Army provides a signed

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<sup>1</sup> As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

written consent for release from the individual whose information is at issue, then the city must release CHRI from the submitted information to the requestor and, with the exception of basic information, may withhold the remaining information under section 552.108(a)(1) of the Government Code. However, if the request was not made for retention purposes or the Army does not provide a signed written consent for release, then, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In either instance, the city must release the 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,

Thana Hussaini  
Assistant Attorney General  
Open Records Division

TSH/be

Ref: ID# 851799

Enc. Submitted documents

c: Requestor  
(w/o enclosures)