



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2022

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

OR2022-02131

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# 928179 (ORR# W07489).

The Killeen Police Department (the "department") received a request for information pertaining to a specified incident that involves a named individual. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.108(a) 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). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue 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, 710 (Tex. 1977). The department states the submitted information relates to a pending criminal investigation. Based on 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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 the *Houston Chronicle* decision. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle* decision). We note basic information includes a detailed description of the offense and the identity of the complainant, but does not include the identity of the victim, unless the victim is the complainant. See ORD 127 at 3-4. Thus, with the exception of basic information, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 683. Upon review, we find some of the basic information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor is a with the Defense Counterintelligence and Security Agency (“DCSA”). 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 DCSA 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 DCSA 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).

Federal law provides DCSA'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”). However, federal law also provides DCSA's right of access is contingent on receiving written consent from the individual under investigation for the release of such CHRI. See 5 U.S.C. § 9101(c). Thus, if DCSA provides a signed written consent for release from the named individual, then the department must release the CHRI

of the named individual. If DCSA does not provide a signed written consent for release from the named individual, then the department is not required to release the information at issue on that ground.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, if DCSA provides a signed written consent for release from the named individual, then the department must release the CHRI of the named individual.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jm

Ref: ID# 928179

Enc. Submitted documents

c: Requestor
(w/o enclosures)