



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2022

Mr. Trenton M. Dietz
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604

OR2022-13776

Dear Mr. Dietz:

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# 947390 (Ref. No. 22-363).

The Abilene Police Department (the "department") received a request for information pertaining to two specified incidents involving a named individual. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the submitted arguments 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). You state the submitted information pertains to active criminal investigations or prosecutions. 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). We note basic information includes, among other items, the arrestee's address. See ORD 127 at 3-4. However, basic information does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. See *id.* Accordingly, with the exception of the basic information, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

However, we note the requestor is a representative of the United States Air Force (the "Air Force") 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 Air Force 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)(8) (DoD includes the Department of the Air Force). 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 Air Force'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 Air Force'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 Air Force'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).

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information. Further, as we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recording. See generally Occ. Code § 1701.661(a), (e).

In this instance, the requestor states the named individual is a member of the Air Force and we understand the requestor seeks the information for retention purposes. However, we are unable to determine whether the individual whose CHRI is at issue provided the Air Force with a signed authorization for the release of the information at issue. Accordingly, if the Air Force provides a signed written consent for release from the individual whose information is at issue, then the department must release CHRI from the submitted information to the requestor. However, if the Air Force does not provide a signed written consent for release, then the department need not release the CHRI.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.² Gov't Code § 552.1175. Section 552.1175 applies, in part, to “a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by [s]ection 437.001[.]” *Id.* § 552.1175(a)(15). We understand some of the basic information relates to a member of the United States Air Force. Accordingly, if the individual at issue elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the department must generally withhold the information we have marked under section 552.1175 of the Government Code. However, we note section 552.1175 protects privacy. Thus, if the Air Force provides a signed written consent for release from the individual whose information is at issue, then the department may not withhold the information under section 552.1175(a)(15) of the Government Code. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Further, if the individual at issue does not elect to restrict access to their information in accordance with section 552.1175(b), then the department may not withhold any portion of the information at issue under section 552.1175.

In summary, with the exception of the basic information, which must be released, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code; however, if the Air Force provides a signed written consent for release from the individual whose information is at issue, then the department must also release CHRI to the requestor. If the individual at issue elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code and if the Air Force does not provide a signed written consent for release from the individual whose information is at issue, then in releasing the basic information, the department must withhold the information we have marked under section 552.1175(a)(15) of the Government Code.

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jxd

Ref: ID# 947390

Enc. Submitted documents

c: Requestor
(w/o enclosures)