



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 17, 2022

Ms. Cara Leahy White  
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6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2022-35873

Dear Ms. White:

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# 985406 (ORR Nos. W003763 & W003800).

The Weatherford Police Department (the "department"), which you represent, received two requests from different requestors for number 2000014221 involving a named individual. The department states it is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> The department also states it is withholding certain information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> 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 exceptions the department claims and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

<sup>2</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the submitted information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, 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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>3</sup>

However, we note the requestors are recruiters for the United States Navy (the “Navy”), and the named individual is a potential enlistee in the Navy. The United States Department of Defense (the “DoD”) is authorized to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into 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 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 state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 “shall apply notwithstanding any other provision of law of any State”). We conclude the Navy’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) (state law preempted to extent it actually conflicts with federal law); *see also La. 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). However, federal law also provides the Navy’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. § 101(c), (b)(1)(A)(iii).

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<sup>3</sup> As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

The requestors state they seek the information for recruiting purposes and the individual at issue provided the Navy with signed authorization for the release of the information at issue. Accordingly, the department must release CHRI pertaining to the named individual from the submitted information pursuant to section 9101 of title 5 of the United States Code.

In summary, with the exception of CHRI pertaining to the named individual, which must be released to these requestors pursuant to section 9101 of title 5 of the United States Code, and the basic information, which must also be released, the department may withhold the submitted 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/jxd

Ref: ID# 985406

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)