



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2006

Ms. Leann D. Guzman
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2006-08753

Dear Ms. Guzman:

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# 255868.

The Fort Worth Police Department (the "department") received two requests for information pertaining to a named individual. You claim that the requested 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) 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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the submitted 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that 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*. 531 S.W.2d 177. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, we agree that section 552.108(a)(1) applies to the submitted information and may be withheld from the second requestor.

However, we note that in this instance, the first requestor identifies herself as a senior investigator for the Texas Medical Board (the "board"). Section 153.006 of the Occupations Code provides in part that "[t]he [board] may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant." Occ. Code § 153.006(a). Furthermore, section 411.099 of the Government Code specifically grants the board a right of access to obtain criminal history record information ("CHRI") from the Texas Department of Public Safety (the "DPS"). Section 411.099 provides as follows:

The [board] is entitled to obtain from the [DPS CHRI] maintained by the [DPS] that relates to a person who is:

- (1) an applicant for a license under Subtitle B, Title 3, Occupations Code; or
- (2) the holder of a license under that subtitle.

Gov't Code § 411.099.¹ Likewise, under section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]" *Id.* § 411.087(a)(2). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2).

In this instance, the board seeks access to information pertaining to a named physician. We conclude that, when read together, section 153.006 of the Occupations Code and sections 411.087 and 411.099 of the Government Code grant the board a statutory right of access to a portion of the submitted information. See also *id.* § 411.082(2); cf. *Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same

¹We note that section 411.099 refers to "[t]he Texas State Board of Medical Examiners." Section 152.001 of the Occupations Code provides in part that "[a] reference in any other law to the former Texas State Board of Medical Examiners means the Texas Medical Board." Occ. Code § 152.001(b).

subject matter in latter statute, later use of term is same as previously defined). Therefore, the department must release to the first requestor information from the submitted documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charge and its disposition. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). With the exception of basic information, the department may withhold the remaining information from the first requestor under section 552.108(a)(1) of the Government Code. We note that the department has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Anne Prentice
Assistant Attorney General
Open Records Division

AP/sdk

Ref: ID# 255868

Enc. Submitted documents

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