



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2010

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2010-04640

Dear Ms. Villarreal:

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# 375226 (LGL-10-91).

The Waco Police Department (the "department") received a request for information related to a specified arrest and a named individual. You state the department has released the basic "front page information" to the requestor. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You also state you have redacted some information pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).¹ However, we note the previous determination is not applicable to vehicle license years or vehicle identification numbers. *See* ORD 684. You claim information you have highlighted is excepted from disclosure under section 552.108 of the

¹We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) 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[.]” *Id.* § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the release of the information you have marked under section 552.108 would interfere with a pending criminal case. Based on your representations, we conclude that section 552.108(a)(1) is applicable to the marked information. *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). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

We note that some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state.² *See Gov’t Code* § 552.130(a)(2). The Texas license years and vehicle identification numbers we have marked fall within the scope of section 552.130 and must be withheld.

We also note that the requestor identifies herself as an investigator for the Texas Board of Nursing (the “board”). Section 411.125(a) of the Government Code provides that

[t]he [board] is entitled to obtain from the [Texas Department of Public Safety (the “DPS”)] criminal history record information maintained by the [DPS] that relates to a person who:

- (1) is an applicant for or the holder of a license issued by the board;
- (2) has requested a determination of eligibility for a license from the board; or
- (3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

²This office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See Gov’t Code* §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Gov't Code § 411.125(a). Moreover, section 411.087(a) of the Government Code provides in part:

(a) A person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). "Criminal history record information" is defined as "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). Thus, under sections 411.125 and 411.087, the requestor may have a right of access to any criminal history record information about the named person contained in the department's records. The submitted police report lists the named individual as the arrested person. Thus, the report may contain the criminal history record information of this individual.

Accordingly, if the individual who is named as the arrested person in the report is an applicant for a license from the board, a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge, then the requestor is authorized to obtain the criminal history record information in the submitted report from the department pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), 082(2), .125(a). Thus, if any of these conditions is met, then the department must make available to the requestor criminal history record information under section 411.087.³ *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). The department may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code. However if the individual who is named as the arrested person in the report does not meet any of the criteria of subsection 411.125(a)(1)-(3), then the board does not have a special right of access to the criminal history record information under section 411.087. In that event, the department may withhold the information marked under section 552.108(a)(1) of the Government Code. In either case, the department must withhold the Texas license

³Texas license years and vehicle identification numbers are not CHRI. *See id.* § 411.082(2).

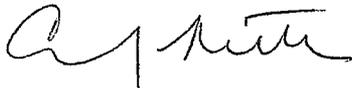
years and vehicle identification numbers we have marked under section 552.130 of the Government Code.

In summary, if the board has a right of access pursuant to section 411.087(a)(2) of the Government Code, the department must make available to the requestor criminal history record information under section 411.087 but may withhold the remaining information marked under section 552.108(a)(1) of the Government Code. If the board does not have a right of access to the criminal history record information under section 411.087, the department may withhold the information marked under section 552.108(a)(1) of the Government Code. In either case, the department must withhold the Texas license years and vehicle identification numbers we have marked under section 552.130 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 375226

Enc. Submitted documents

c: Requestor
(w/o enclosures)