



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2010

Ms. Kristy Ashberry  
City Secretary  
City of Rockwall  
385 South Goliad  
Rockwall, Texas 75087

OR2010-06727

Dear Ms. Ashberry:

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# 378943.

The Rockwall Police Department (the "department") received a request for all incident reports pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception 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 submitted report pertains to an open and active investigation. Based on this representation, 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).

However, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The department must release basic information, including a detailed description

of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the department may generally withhold the submitted information under section 552.108(a)(1).

We note, however, 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.

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.

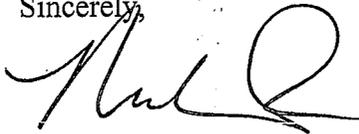
*Id.* § 411.087(a)(2). "Criminal history record information" is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Thus, under sections 411.125 and 411.087, the requestor may have a right of access to 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 both the criminal history record information under section 411.087 and basic information under section 552.108(c). *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 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 must release basic information under section 552.108(c) and may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/eeg

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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Enc. Submitted documents

cc: Requestor  
(w/o enclosures)