



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2010

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

OR2010-07952

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# 381454.

The City of Rockwall (the "city") received two requests from the same requestor for information regarding three specified incidents involving a named individual. You state that you will redact social security numbers from the requested information pursuant to section 552.147 of the Government Code.¹ 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(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that 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). You state that the submitted information pertains to closed cases

¹Section 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 under the Act. Gov't Code § 552.147(b).

that did not result in convictions or deferred adjudications. Based on your representations and our review, we find that section 552.108(a)(2) is generally applicable to the submitted information.

In this instance, however, the requestor is a representative with the Texas State Board of Pharmacy (the "board"). Section 411.122(a) of the Government Code provides that

an agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who: (1) is an applicant for a license from the agency; (2) is the holder of a license from the agency; or (3) requests a determination of eligibility for a license from the agency.

Id. § 411.122(a). We note that the board is specifically subject to section 411.122 of the Government Code. *See id.* § 411.122(d)(14). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) A person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] 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." *See id.* § 411.082(2). In this instance, the submitted information contains "criminal history record information."

The board indicates that the arrestee in the cases at issue is a holder of a license from the board. Accordingly, the board is authorized to obtain criminal history record information in the submitted information pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .122(a). Consequently, criminal history record information in the submitted information must be released to the requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

Additionally, 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 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). See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of criminal history record information and basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(2).²

We note that this office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. See Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. See ORD 516. In adherence to this policy, this office has concluded that information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. See Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); ORD 655, 414 (1984). However, the transfer of confidential information from one governmental body to another is prohibited where the relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. See Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); see also Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). Section 552.108 is not a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Thus, pursuant to the intergovernmental transfer doctrine, the city has the discretion to release the information subject to section 552.108 to the requestor.

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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 381454

Enc. Submitted documents

c: Requestor
(w/o enclosures)