



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2010

Ms. Michelle Lilley
Livingston Police Department
208 West Church
Livingston, Texas 77351

OR2010-12292

Dear Ms. Lilley:

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# 390298.

The Livingston Police Department (the "department") received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a named individual and specified incident. You claim that the submitted 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)(1) 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)(1). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the department states that the information at issue relates to a pending criminal case. Based on this representation and our review, we determine 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 basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such 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, you may generally withhold the submitted information pursuant to section 552.108(a)(1).

However, we note that the requestor is an investigator with the TEA which has assumed the duties of the State Board for Educator Certification (the "SBEC").¹ As such, the requestor may have a right of access to some of the submitted information. Section 22.082 of the Education Code provides that the SBEC "may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a specific applicant for or holder of a certificate." Educ. Code § 22.082. Section 411.090 of the Government Code grants a right of access for the SBEC to obtain criminal history record information ("CHRI") from the Department of Public Safety ("DPS") on persons who have applied to the SBEC. *See* Gov't Code § 411.090. Additionally, section 411.0901 of the Government Code specifically provides the TEA with a right of access to obtain CHRI maintained by DPS on certain school employees or applicants for employment. *See id.* § 411.0901. Furthermore, pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [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, information, and other formal criminal charges and their dispositions." *Id.* § 411.082(2).

We find that, when read together, section 22.082 of the Education Code and section 411.087 of the Government Code give the TEA a statutory right of access to portions of the submitted information. *See id.*; *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 subject matter in latter statute, later use of term is same as previously defined). Accordingly, we conclude that the department must release information from the submitted documents to this requestor that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision

¹The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to TEA, effective September 1, 2005.

No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act).²

In summary, the department must release information from the submitted incident report that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, pursuant to section 22.082 of the Education Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 390298

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.