



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2010

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
For City of McKinney
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2010-15921

Dear Mr. Griffith:

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#397403.

The McKinney Police Department (the "department"), which you represent, received a request for a specified incident report. 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) 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). 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). You state the submitted information relates to an ongoing criminal investigation. Based on this representation and our review, we conclude 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

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*, and includes a detailed description of the offense. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus with the exception of basic information, the department may generally withhold the information you have submitted under section 552.108(a)(1) of the Government Code.

In this instance, however, we believe the requestor may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides that "[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information maintained by the [Department of Public Safety] about a person." See Gov't Code § 411.089(a). 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). We note that "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). Thus, the submitted incident report in this instance contains "criminal history record information." However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. See *id.* §§ 411.083(c), .087(b); see also Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

A "criminal justice agency" is defined in part as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." *Id.*

§ 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Crim. Proc. Code art. 60.01(1).

In this case, the department received the request from the Dallas County Community Supervision and Corrections Department (the “county”). Although it appears the county is engaged in the administration of criminal justice under chapter 411, we cannot determine whether it intends to use the criminal history record information for a criminal justice purpose. Thus, if the department determines the county intends to use the criminal history record information for a criminal justice purpose, we conclude the department must make available to the county the criminal history record information from the incident report, otherwise subject to section 552.108, that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). With the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. However, if the department determines the county does not intend to use the criminal history record information for a criminal justice purpose, with the exception of basic information, which must be released, the department may withhold the submitted incident report under section 552.108(a)(1) of the Government Code.

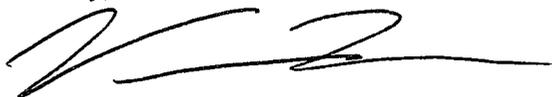
In summary, if the department determines the county intends to use the criminal history record information for a criminal justice purpose, the department must provide the criminal history record information from the incident report to the county. With the exception of basic information, the remaining information in the incident report may be withheld under section 552.108(a)(1) of the Government Code. If the department determines the county does not intend to use the criminal history record information for a criminal justice purpose, the department may withhold the submitted incident report, with the exception of basic 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,

A handwritten signature in black ink, appearing to read 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 397403

Enc. Submitted documents

c: Requestor
(w/o enclosures)