



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 28, 2010

Ms. Judith N. Benton  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2010-19393

Dear Ms. Benton:

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# 404127 (Waco Reference No. LGL-10-1380).

The Waco Police Department (the "department") received a request for information related to report 10-17096 and a named individual. You state the department will release basic information to the requestor.<sup>1</sup> You claim portions of the submitted information are 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). 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 assert, and provide a memo from the department supporting the assertion, that report 10-17096 relates to a pending prosecution and release of the report would interfere with the detection, investigation, and prosecution of the alleged crime. Based on these representations and our

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<sup>1</sup>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).

review, we conclude section 552.108(a)(1) is applicable to the information you have marked. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

We note the remaining information in report 10-17096 contains information that is confidential under section 552.136 of the Government Code. Section 552.136 states, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the department must withhold the credit card number we have marked pursuant to section 552.136 of the Government Code.<sup>2</sup>

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

[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. 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:

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<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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(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 individual contained in the department’s records. The submitted police report lists the named individual as the arrested person. Thus, the report may contain criminal history record information about this individual.

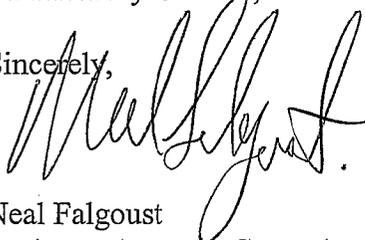
Accordingly, if the individual who is named as the arrested person in the report is an applicant for a license from the board, a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with 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. *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 marked 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(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 marked information under section 552.108(a)(1) 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 marked 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 marked information under section 552.108(a)(1) of the Government Code. In either case, the department must withhold the credit card number we have marked under section 552.136 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/dls

Ref: ID# 404127

Enc. Submitted documents

c: Requestor  
(w/o enclosures)