



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2011

Mr. Mack Reinwand  
Assistant City Attorney  
Arlington Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2011-05819

Dear Mr. Reinwand:

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# 415651 (APD Reference No. 3122-020811).

The Arlington Police Department (the "department") received a request for arrest and offense reports concerning a named individual; specifically for an arrest which occurred on February 4, 2011. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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 requested information, which consists of report numbers 11-7092 and 08-84338, relates to a pending and open criminal investigation. You have marked report number 11-7092 as "active." Based on your representation and our review, we determine that release of report number 11-7092 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Accordingly,

section 552.108(a)(1) is applicable to report number 11-7092. However, you have marked report number 08-84338 as "closed other." Consequently, we find you have not demonstrated the applicability of section 552.108(a)(1) to report number 08-84338, and it may not be withheld under section 552.108.

We note 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*, and includes, among others, an arrestee's name. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Here, however, the name of one of the arrestees in report number 11-7092 is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.12 of the Penal Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." See Gov't Code § 552.101. This exception encompasses information protected by other statutes, such as section 21.12(a) of the Penal Code. Section 21.12(a) provides a public or private school employee commits an offense if the employee engages in "sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works[.]" Penal Code § 21.12(a)(1). Further, section 21.12(d) provides "[t]he name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under [the Act]." *Id.* § 21.12(d). Thus, the name of the student arrestee allegedly involved in an improper relationship with an educator is confidential under section 21.12(d), and must be withheld from the basic information under section 552.101.

We understand you to argue the remaining basic information in this instance is excepted from disclosure under the common-law right to privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find none of the remaining basic information is highly intimate or embarrassing and not of legitimate public interest. Thus, none of the remaining basic information may be withheld under section 552.101 in conjunction with common-law privacy.

In this instance, the requestor states he is seeking this information pursuant to section 22.083 of the Education Code for the Arlington Independent School District (the "district"). Section 22.083 authorizes a school district to obtain criminal history record information ("CHRI") that relates to an employee of the district from a law enforcement agency. *See* Educ. Code § 22.083(a)(1), (a-1)(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, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2); *see also id.* §§ 411.097(b) (school district is entitled to obtain from Texas Department of Public Safety (the "DPS") CHRI relating to district employee that district is required or authorized to obtain under Educ. Code ch. 22 subch. C), .087(a)(2) (agency entitled to obtain CHRI from DPS also is authorized to "obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency]"). *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). In this instance, the requestor states the named individual is currently a district employee. Therefore, the department must release information to this requestor from report number 11-7092 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). Except for the basic information that must also be released, the department may withhold the remaining information from report number 11-7092 under section 552.108(a)(1) of the Government Code. In releasing the basic information, the department must withhold the name of the student arrestee allegedly involved in an improper relationship with an educator under section 552.101 of the Government Code in conjunction with section 21.12(d) of the Penal Code.

We note report number 08-84338 contains information that is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 of the Government Code excepts from public disclosure information that relates to a Texas motor vehicle title or registration. Gov't Code § 552.130(a)(2). The department must withhold the Texas motor vehicle record information we marked under section 552.130.<sup>2</sup>

In summary, the department must release information to this requestor from report number 11-7092 that shows the type of allegation made and whether there was an arrest,

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.130 of the Government Code, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

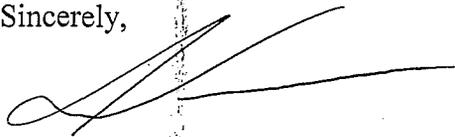
<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 22.083 of the Education Code. Except for the basic information that must also be released, the department may withhold the remaining information from report number 11-7092 under section 552.108(a)(1) of the Government Code. In releasing the basic information, the department must withhold the name of the student arrestee allegedly involved in an improper relationship with an educator under section 552.101 of the Government Code in conjunction with section 21.12(d) of the Penal Code. The department must withhold the information we have marked from report number 08-84338 under section 552.130 of the Government Code. The remaining information in report 08-84338 must be released.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/bs

Ref: ID# 415651

Enc. Submitted documents

c: Requestor  
(w/o enclosures)