



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2011

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2011-09978

Dear Ms. Chatterjee:

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# 423715 (OGC# 137110).

The University of Texas Southwestern Medical Center (the "university") received a request for the requestor's personnel file. You state the university will release some of the requested information. You claim that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Although you take no position with regard to the remaining information, you inform us that you have notified an interested third party, the Houston Police Department (the "department") of the request and of its right to submit comments to this office stating why the remaining information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received correspondence from the department objecting to the release of the remaining information. *See id.* We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *Id.* § 411.083(a). CHRI means "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). Section 411.083 authorizes the Texas Department of Public Safety (“DPS”) to disseminate CHRI to “noncriminal justice agencies authorized by . . . state statute to receive criminal history record information[.]” *Id.* § 411.083(b)(2). Section 411.094 of the Government Code provides in part:

(b) The Texas Higher Education Coordinating Board and each institution of higher education are entitled to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to a person who is an applicant for a security-sensitive position at the coordinating board or institution, as applicable.

(c) Criminal history record information obtained under Subsection (b) may be used only for the purpose of evaluating applicants for employment in security-sensitive positions.

(d) Criminal history record information received under Subsection (b) may not be released or disclosed to any person except on court order or with the consent of the person who is the subject of the criminal history record information.

Act of May 23, 2011, 82nd Leg., R.S., H.B. 2937, § 3 (to be codified as an amendment to Gov’t Code § 411.094(b, c, and d)). You state the university is an institution of higher education. Gov’t Code § 411.094(a)(1) (defining “Institution of higher education”); Educ. Code § 61.003(5) (defining “Medical and dental unit”), (8) (defining “Institution of higher education”). You inform us the university obtained the CHRI of the requestor for the purpose of evaluating the requestor’s application for a position as a peace officer in the university’s police department, which you assert is a security-sensitive position since such an employee would have access to a computer terminal and would work in a location designated as a security-sensitive area. *See* Act of May 23, 2011, 82nd Leg., R.S., H.B. 2937, § 2 (to be codified as an amendment to Gov’t Code § 411.094(a)(2)) (defining “Security-sensitive position”). Upon review, we agree that portions of the information at issue constitute CHRI for the purposes of chapter 411. However, we note that section 411.094(d) allows the release of CHRI with the consent of the person who is the subject of the CHRI. *See* Act of May 23, 2011, 82nd Leg., R.S., H.B. 2937, § 3 (to be codified as an amendment to Gov’t Code § 411.094(d)). Therefore, pursuant to section 411.094(d) of the Government Code, the requestor is entitled to the release of his own CHRI.

You assert that under section 411.085 of the Government Code the university would commit an offense by releasing this information to the requestor. Section 411.085 states in relevant part:

(a) A person commits an offense if the person knowingly or intentionally:

(1) obtains criminal history record information in an unauthorized manner, uses the information for an unauthorized purpose, or discloses the information to a person who is not entitled to the information; or

(2) violates a rule of [DPS] adopted under this subchapter.

Gov't Code § 411.085(a). Because section 411.094(d) allows the university to release a person's CHRI to that person with his or her consent, the university would not commit an offense by releasing the CHRI at issue to the requestor in this instance.

Next, as you acknowledge, the submitted information includes the requestor's fingerprints. Section 560.003 of the Government Code provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, the fingerprints in the submitted information must be released to this requestor pursuant to section 560.002(1)(A) of the Government Code.

Next, the department objects to the release of the submitted offense report which is contained in the requestor's personnel file. 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" *Id.* § 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). Where an agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a different law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration that the information relates to the pending case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information. As noted above, the university notified the department that the submitted offense report is at issue in this request for a ruling. The department sent correspondence to this office objecting to the release of the submitted offense report under section 552.108(a)(1) representing the offense report relates to a pending criminal investigation by the department and its release would interfere with the pending investigation. Accordingly, we conclude the release of the information at issue 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. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we find section 552.108(a)(1) of the Government Code is applicable to the submitted offense report.

However, 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*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the university may withhold the submitted offense report under section 552.108(a)(1) of the Government Code on behalf of the department. The remaining information must be released.¹

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

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¹We note that the requestor has a special right of access to some of the information being released in this instance. *See* Act of May 23, 2011, 82nd Leg., R.S., H.B. 2937, § 3 (to be codified as an amendment to Gov't Code § 411.094), Gov't Code §§ 560.002(1)(A). Because such information may be confidential with respect to the general public, if the university receives another request for this information from a different requestor, the university must again seek a ruling from this office.

Ref: ID# 423715

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)