



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2011

Mr. Robert Almonte
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2011-10491

Dear Mr. Almonte:

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# 424706.

The El Paso Police Department (the "department") received a request for information relating to a named individual and a specified incident. You state the department has released some of the requested information. You claim the remaining requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions 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 . . . 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 state the information at issue relates to an ongoing investigation, and release of the information would interfere with the detection, investigation, and prosecution of a 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). Accordingly, we find section 552.108(a)(1) of the Government Code is generally applicable to the information you have indicated. We note, however, the information at issue includes a DIC-24 statutory

warning and a DIC-25 notice of suspension. The department provided copies of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms, which we have marked, may not be withheld under section 552.108 of the Government Code.

We note you have redacted a license plate number and a vehicle identification number from information released to the requestor. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to a motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Open Records Decision No. 684 (2009) authorizes a governmental body to withhold ten categories of information, including a Texas license plate number and a Texas driver's license number, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Open Records Decision No. 684 does not permit a governmental body to withhold a vehicle identification number without requesting a ruling from our office. Upon review, however, we agree the department must withhold the vehicle identification number you have redacted. In addition, we find the department must withhold the driver's license number we have marked in the DIC-24 and DIC-25 forms under section 552.130 of the Government Code.

We 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:

...

(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). In that instance, with the exception of the DIC-24 and DIC-25 forms, the department may withhold the remaining information you have indicated 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, with the exception of the DIC-24 and DIC-25 forms, the department may withhold the information you have indicated under section 552.108(a)(1) of the Government Code.

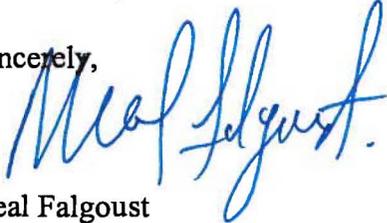
In summary, if the board has a right of access pursuant to section 411.087(a)(2) of the Government Code, the department must make available to the requestor criminal history record information under section 411.087 but may withhold the remaining information you have indicated under section 552.108(a)(1) of the Government Code, with the exception of the marked DIC-24 and DIC-25 forms. 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 information you have indicated under section 552.108(a)(1) of the Government Code, with

the exception of the DIC-24 and DIC-25 forms. In either case, the department must withhold the vehicle identification number you have redacted and the driver's license number we have marked under section 552.130 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 blue ink, appearing to read "Neal Falgoust".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 424706

Enc. Submitted documents

c: Requestor
(w/o enclosures)