



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2012

Mr. J. Frank Davis
Assistant District Attorney
Hays County District Attorney's Office
110 East Martin Luther King
San Marcos, Texas 78666

OR2012-00872

Dear Mr. Davis:

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# 442760.

The Hays County Sheriff's Office (the "sheriff") received a request from an investigator with the Texas Education Agency (the "TEA") for all offense, incident, and investigative reports pertaining to a named individual, including information pertaining to a specified incident. 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) 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 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 pertains to a criminal case that is still open and pending. Based on your representation, we conclude the release of the submitted information at this time 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). Thus, section 552.108(a)(1) is applicable to the information at issue.

We note 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). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the submitted information is subject to section 552.108(a)(1) of the Government Code.

However, as noted above, the requestor is an investigator for the TEA, which has assumed the duties of the State Board for Educator Certification (the "SBEC").¹ Therefore, we must address whether the requestor has access to the information subject to section 552.108(a)(1) of the Government Code. The requestor claims section 22.082 of the Education Code gives the SBEC a right to the requested information and indicates the requested information is related to an SBEC investigation of an individual who has applied for or currently holds educator credentials.² Section 22.082 of the Education Code provides the SBEC "may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate." Educ. Code § 22.082. In this instance, as noted above, you inform us the submitted information pertains to a criminal case that is considered open. Therefore, we agree the TEA may not obtain "all records contained" in the open case under section 22.082 of the Education Code.

However, section 22.082 provides the TEA with a right of access to criminal history record information ("CHRI") from an open investigation. CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). You claim section 22.082 provides access only to CHRI obtained from the Department of Public Safety, not to CHRI from local police reports. However, section 22.082 specifically provides a right of access to CHRI "from any law enforcement or criminal justice agency[.]" Educ. Code § 22.082. Because the sheriff is a law enforcement agency, we conclude CHRI in sheriff's reports is subject to the right of access in section 22.082.

¹The 79th Texas Legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to the TEA, effective September 1, 2005.

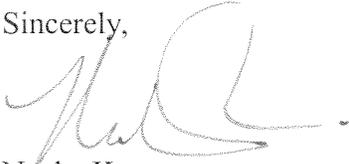
²The requestor also claims a right to the information at issue under sections 261.308 and 261.406 of the Family Code. However, these statutes apply to information held by the Department of Family and Protective Services and not the sheriff. *See* Fam. Code §§ 261.308, .406.

Accordingly, pursuant to section 22.082 of the Education Code, the sheriff must release to this requestor information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions.³ See Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). The sheriff must also release the basic information. The remaining information, however, may be withheld 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 442760

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³Because the TEA has a right of access to certain information in the submitted documents that otherwise would be excepted from release under the Act, the sheriff must again seek a decision from this office if it receives a request for this information from a different requestor without such a right of access.