



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2012

Chief James S. Kelley
Chief of Police
City of Sweetwater
P.O. Box 450
Sweetwater, Texas 79556

OR2012-02166

Dear Chief Kelley:

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# 446097.

The Sweetwater Police Department (the “department”) received a request for information concerning a named individual and specified charges. You claim 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 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 relates to a pending criminal investigation and prosecution. Based on this representation and our review, we conclude that release of the submitted information 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). Accordingly, we find section 552.108(a)(1) of the Government Code is applicable to the submitted information.

However, 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*. 531 S.W.2d at 186–87. This information includes, but is not limited to, the details of the arrest, the physical condition of the arrested person, and a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.

In this instance, however, the requestor is an investigator for the Texas Education Agency (the “TEA”), which has assumed the duties of the State Board for Educator Certification (the “SBEC”).¹ Section 22.082 of the Education Code provides that the SBEC “may obtain from any law enforcement or criminal justice agency all criminal history record information [“CHRI”] and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21 [of the Education Code].” Educ. Code § 22.082. As noted above, you inform us the submitted information pertains to a criminal investigation file that is considered open. Therefore, we agree the TEA may not obtain “all records contained” in the open investigation file under section 22.082 of the Education Code. However, we must consider whether the TEA may obtain CHRI from the department pursuant to section 22.082 of the Education Code. Section 411.090 of the Government Code grants the SBEC a right of access to obtain CHRI from the Texas Department of Public Safety (the “DPS”) regarding persons who have applied to the SBEC. See Gov't Code § 411.090. Additionally, section 411.0901 of the Government Code specifically provides TEA with a right of access to obtain CHRI maintained by the DPS regarding certain school employees or applicants for employment. See *id.* § 411.0901. Pursuant to section 411.087 of the Government Code, an agency entitled to obtain CHRI from the DPS also is authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency].” *Id.* § 411.087(a)(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, information, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). We note the TEA states the individual at issue is seeking or currently holds a certificate.

We find, when read together, sections 22.082 of the Education Code and 411.087 of the Government Code give the TEA a statutory right of access to portions of the submitted information. 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

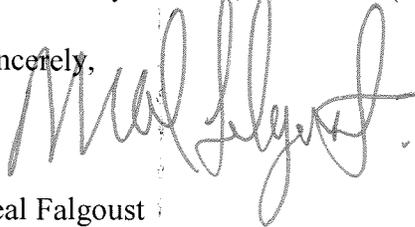
¹The 79th Texas Legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to the TEA, effective September 1, 2005.

uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Thus, we conclude the department 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. See Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). With the exception of basic information, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.²

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/agn

Ref: ID# 446097

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.