



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2012

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2012-04643

Dear Mr. Weir:

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# 449342 (COSA File No. W005203).

The San Antonio Police Department (the "department") received a request for a specified police report involving a named individual. 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.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The submitted information includes a search warrant and return and inventory form signed by a magistrate that are subject to section 552.022(a)(17). You seek to withhold this information under section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.108; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential under the Act. Therefore, the department may not withhold the search warrant and return and inventory form, which we have marked, under section 552.108. However, because section 552.130 of the Government

Code makes information confidential under the Act, we will consider the applicability of this exception to the information at issue, as well as the remaining information.¹

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code. As you raise no further exceptions against disclosure of the search warrant and return and inventory form, the department must release the remaining information in the search warrant and return and inventory form pursuant to section 552.022(a)(17) of the Government Code.

Next, we address your claim under section 552.108 of the Government Code for the rest of the submitted information. Section 552.108(a)(1) 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 remaining information 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 remaining information. 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.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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*). We note basic information does not include motor vehicle record information. Thus, with the exception of

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

basic information and the DIC-24 and DIC-25 forms we have marked, the department may generally withhold the remaining information under section 552.108(a)(1) of the Government Code.

We note the requestor is a representative of the Board of Law Examiners (the “board”). Section 411.100(a) of the Government Code provides, “[t]he [board] is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information maintained by [DPS] that relates to a person who is an applicant to take a bar examination.” Gov’t Code § 411.100. 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 [DPS] criminal history record information maintained by [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 411.100 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 a person who is an applicant to take the bar examination, 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), .100(a). Thus, if this condition is met, the department must make available to the requestor criminal history record information under section 411.087. *See* ORD 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of basic information and the DIC-24 and DIC-25 forms, the department may withhold the remaining information 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 the criteria of subsection 411.100(a), 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 basic information and the DIC-24 and DIC-25 forms, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the information we marked in the search warrant under section 552.130 of the Government Code and release the remaining information in the search warrant and return and inventory form pursuant to section 552.022(a)(17) of the Government Code. 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 under section 552.108(a)(1) of the Government Code, with the exception of basic information and 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 remaining information under section 552.108(a)(1) of the Government Code, with the exception of basic information and the DIC-24 and DIC-25 forms.

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 449342

Enc. Submitted documents

c: Requestor
(w/o enclosures)