



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2012

Ms. Linda Pemberton
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-07248

Dear Ms. Pemberton:

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# 453825 (W007491).

The Killeen Police Department (the “department”) received two requests for a specified offense report. You state the department has released some of the requested information, but 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 representative sample of information.¹

Section 552.108(a)(2) of the Government Code excepts “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred

¹We assume the “representative sample” of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to a closed case that concluded in a final result other than conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is applicable to the submitted report.

We note section 552.108 of the Government Code 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state has been released, the department may generally withhold submitted information under section 552.108(a)(2) of the Government Code.

However, we also note one of the requestors is a representative of the Brigade Judge Advocate of the United States Army (the “Army”) and, thus, may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record information maintained by the [Department of Public Safety] about a person.” *See* Gov’t Code § 411.089(a). In addition, section 411.087(a)(2) of the Government Code provides the following:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] 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). “[C]riminal 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.” *See id.* § 411.082(2). Thus, the submitted information in this instance contains “criminal history record information.” However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), 411.087(b); *see also* Open Records Decision No. 655 (1997)

(discussing limitations on release of criminal history record information). Thus, to the extent the requestor who represents the Army represents a “criminal justice agency,” this requestor is authorized to obtain criminal history record information from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov’t Code §§ 411.083(c), .087(a)(2).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” *Id.* § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Code Crim. Proc. art. 60.01(1).

We are unable to determine whether the requestor who represents the Army is a representative of a criminal justice agency or whether he intends to use the criminal history record information for a criminal justice purpose. Consequently, if the department determines this requestor is a representative of a criminal justice agency for purposes of chapter 411 and he intends to use the criminal history record information for a criminal justice purpose, then the department must make available to this requestor the criminal history record information from the documents that shows the type of allegation 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 the Act). In this instance, with the exception of basic information the department, may withhold the remaining information under section 552.108(a)(2). If, however, the department determines the requestor who represents the Army either is not a representative of a criminal justice agency for purposes of chapter 411 or he does not intend to use the criminal history record information for a criminal justice purpose, then this requestor does not have a right of access to the submitted criminal history record information pursuant to chapter 411. In this instance, with the exception of basic information, the department may withhold the submitted information from both requestors under section 552.108(a)(2). In either case, with the exception of basic information, the department may withhold the submitted information from the other requestor under section 552.108(a)(2).

In summary, with the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. Pursuant to section 411 of the Government Code, the department must release to the requestor who represents the Army information from the submitted documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention,

conviction, or other formal charges and their dispositions, if the department determines this requestor is a representative of a criminal justice agency and he intends to use this information for a criminal justice purpose.

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 cursive script that reads "Jennifer Burnett". The signature is written in black ink and is positioned above the typed name.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 453825

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)