



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2013

Ms. Susan Camp-Lee
Counsel for the City of Round Rock
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2013-16875

Dear Ms. Camp-Lee:

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# 500947.

The Round Rock Police Department (the "department"), which you represent, received a request for all offense, incident, and investigative reports regarding a named individual, including a specified incident and a second request from a different requestor for information relating to the specified incident involving the named individual. You state the department is releasing some of the requested information. 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) 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 pending criminal cases. Based on your representation and our review, we conclude the 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 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 submitted information.

Section 552.108, however, 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*. See 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). We note basic information does not include information subject to section 552.130 of the Government Code. See ORD 127 at 3-4. 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.

However, we must address whether the requestors have a right of access to the information subject to section 552.108(a)(1) of the Government Code. In this instance, the first 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 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. 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 the 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 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 information at issue. 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 uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). We note a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. See Open Records Decision Nos. 613

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

at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, we conclude the department must release to the first 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, which you state the department has released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code in response to the first request.

Next, we note the second requestor is an investigator with the Texas Board of Nursing (the "board"). Section 411.125 of the Government Code provides:

The [board] is entitled to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to a person who:

- (1) is an applicant for or 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. As stated above, 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). Thus, under sections 411.125 and 411.087, the second requestor may have a right of access to any CHRI about the named individual contained in the department's records.

Accordingly, if the individual at issue 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 second requestor is authorized to obtain the CHRI 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). As noted above, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *See* ORD 613, 451. Thus, if any of these conditions are met, the department must make available to the second

requestor CHRI under section 411.087. In that instance, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code in response to the second request. 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 CHRI under section 411.087. In that event, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code in response to the second request.

In summary, in response to the first request, the department must release 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. With the exception of basic information, which you state the department has released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In response to the second request, if the board has a right of access pursuant to sections 411.125 and 411.087(a) of the Government Code, the department must make available to the requestor CHRI under section 411.087, but, with the exception of basic information, may withhold the remaining information under section 552.108(a)(1) of the Government Code. If the board does not have a right of access pursuant to sections 411.125 and 411.087 then, with the exception of basic information, the department may withhold the submitted information 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 500947

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)