



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 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

OR2013-19406

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# 504864.

The Round Rock Police Department (the "department"), which you represent, received a request for all detailed warrants and offense, incident, and investigative reports related to a specified offense. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state the submitted report is confidential under section 261.201. Although the information at issue indicates Child Protective Services (“CPS”) was contacted by the reporting officer in this report and CPS issued a case number as a result, you do not explain, nor does this information reflect, the department or CPS used or developed this information in an investigation of alleged or suspected child abuse or neglect. Consequently, you have failed to demonstrate the submitted information, which is an investigation of an allegation of an assault involving two adults, was used or developed in an investigation under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Therefore, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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 inform us the submitted information pertains to an active criminal investigation. Based on your representation, we conclude the release of the information at issue 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 submitted information.

However, 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*. *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, which must be released, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

¹As our ruling is dispositive, we need not consider your remaining argument against disclosure.

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

[The board] is entitled to obtain from the [Department of Public Safety (the "DPS")] criminal history record information [{"CHRI"}] maintained by the [DPS] that relates to a person who:

- (1) is an applicant for or the holder of a license 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. In addition, section 411.087(a) of the Government Code provides in pertinent part,

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI 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). We note the submitted information contains CHRI. However, the board does not indicate, and we are not otherwise able to determine, whether either arrestee in this case is an applicant for or 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 against the arrestee. Accordingly, we must rule in the alternative. If either arrestee is an applicant for or 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 board is authorized to obtain the arrestee's CHRI in the submitted information pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .125. In that instance, the department must release CHRI pertaining to the arrestee. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Consequently, with the exception of basic information and CHRI pertaining to the arrestee, which must be released, the department may

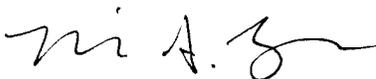
withhold the submitted information from the requestor pursuant to section 552.108(a)(1) of the Government Code. However, if the arrestees in this case do not meet any of the criteria of subsection 411.125, then the board does not have a special right of access to the arrestees' CHRI under section 411.087. In that instance, the department may, with the exception of basic information, withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the board has a right of access to CHRI pertaining to either arrestee pursuant to sections 411.087(a)(2) and 411.125 of the Government Code, then the department must release basic information and CHRI pertaining to the arrestee; but the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. If the board does not have such a right of access pursuant to sections 411.125 and 411.087, then, with the exception of the 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 504864

Enc. Submitted documents

c: Requestor
(w/o enclosures)