



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2013

Ms. Terri Bradley
Records Division
City of Rosenberg
2120 Fourth Street
Rosenberg, Texas 77471

OR2013-20876

Dear Ms. Bradley:

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# 509352.

The Rosenberg Police Department (the "department") received a request from an investigator with the Texas Education Agency (the "TEA") for all offense, incident, and investigative reports regarding a named individual, including information pertaining to a specified case number. You state the department has released some of the requested information. You claim some of 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) 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: (1) 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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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 information at issue relates to a criminal case that is pending investigation by the department. Based upon your representation and our review, we conclude 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 information you have marked.

We note, 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 front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of the basic information, the department may generally withhold the information you have marked under section 552.108(a)(1).

However, we must address whether the requestor has a right of access to some of the information you have marked that is subject to section 552.108 of the Government Code. In this instance, the requestor is an investigator for 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

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.

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 Center Point Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *Collins v. Tex. Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). The department may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code, with the exception of the basic information.

We note portions of the remaining information are subject to section 552.130 of the Government Code.² Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the department must withhold the information we have marked under section 552.130.³

In summary, the department must release information from the submitted documents that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 22.082 of the Education Code.⁴ With the exception of basic information, which must be released, the department may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code and must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

⁴As noted, the requestor has a special right of access, beyond that of the general public, to some of the information being released in this instance. *See* Educ. Code § 22.082. Therefore, if the department receives another request for this information from a different requestor, it must again seek a ruling from this office.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 509352

Enc. Submitted documents

c: Requestor
(w/o enclosures)