



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 2, 2014

Ms. Susan Fillion  
Assistant County Attorney  
Harris County Sheriff's Office  
1200 Baker Street, 2<sup>nd</sup> Floor  
Houston, Texas 77002

OR2014-17589

Dear Ms. Fillion:

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# 538312 (HCSO File No. 14SO50057).

The Harris County Sheriff's Office (the "sheriff's office") received a request for a specified offense report. 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)(2) 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 . . . 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the submitted information pertains to a criminal case that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to the submitted information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publ'g 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). Thus, with the exception of basic information, the

sheriff's office may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

We note, however, the requestor is an investigator with the Texas State Board of Pharmacy (the "board"). Section 411.122(a) of the Government Code provides that

[A]n agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who:

- (1) is an applicant for a license from the agency;
- (2) is the holder of a license from the agency; or
- (3) requests a determination of eligibility for a license from the agency.

Gov't Code § 411.122(a). We note that the board is specifically subject to section 411.122 of the Government Code. *See id.* § 411.122(d)(14). 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 [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). "Criminal history record information" ("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). Thus, under sections 411.122 and 411.087, the requestor may have a right of access to any CHRI about the named individual contained in the sheriff's office records. The submitted information lists the named individual as an arrested person. Thus, the report contains CHRI about this individual.

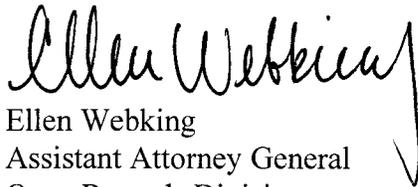
Accordingly, if the individual at issue is an applicant for a license from the board, a holder of a license from the board, or has requested a determination of eligibility for a license from

the board, then the requestor is authorized to obtain the CHRI in the submitted report from the sheriff's office pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .122(a). Although you raise section 552.108 of the Government Code for such information, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *See* Open Records Decision Nos. 613 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, if any of these conditions are met, then the sheriff's office must make available to the requestor CHRI under section 411.087. In that instance, with the exception of basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, if the individual at issue does not meet any of the criteria of subsection 411.122(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 sheriff's office may withhold the submitted information under section 552.108(a)(2) 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](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,

  
Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/ac

Ref: ID# 538312

Enc. Submitted documents

c: Requestor  
(w/o enclosures)