



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 29, 2016

Ms. Dawn Roberts
Assistant City Attorney
Legal Division
Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2016-04747

Dear Ms. Roberts:

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# 600221 (Police Dept. Reference No. 24659).

The Arlington Police Department (the "department") received a request a specified incident 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)(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 state the submitted information pertains to a pending and open criminal investigation. Based on your representation and our review, 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.

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. 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, the department may generally withhold the submitted information under section 552.108(a)(1).

In this instance, however, the requestor is a representative of the Enforcement Division of the Texas State Board of Nursing (the “board”). Section 411.125 of the Government Code provides,

[The board] is entitled to obtain from the [Texas 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 or Subchapter E-1 to obtain from the [DPS] [CHRI] 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). In this instance, the submitted information contains CHRI. However, the requestor does not indicate, and we are not otherwise able to determine, whether the arrestee in this case 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 against the arrestee. Accordingly, we must rule in the alternative. If the 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 against

the arrestee, then the board is authorized to obtain the arrestee's CHRI in the submitted information pursuant to sections 411.087(a)(2) and 411.125 of the Government Code. *See id.* §§ 411.087(a)(2), .125. In that instance, with the exception of the basic information and CHRI pertaining to the named individual, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the arrestee in this case is not an applicant for or a holder of a license from the board, has not requested a determination of eligibility for a license from the board, or is not subject to investigation by the board in connection with a complaint or formal charge against the arrestee, then the board is not authorized to obtain the named individual's CHRI in the submitted information pursuant to sections 411.087(a)(2) and 411.125, and the department need not release such information to this requestor. In this instance, with the exception of the basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1).

In summary, if the board has a right of access to CHRI pursuant to sections 411.087(a)(2) and 411.125 of the Government Code, then with the exception of the basic information and CHRI pertaining to the named individual, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. If the board does not have such a right of access to CHRI, then with the exception of the basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1).

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 600221

Enc. Submitted documents

c: Requestor
(w/o enclosures)