



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 26, 2016

Mr. Justin Pruitt
Assistant City Attorney
Office of the City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2016-16733

Dear Mr. Pruitt:

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# 620437 (City File No. 1351).

The Lubbock Police Department (the "department") received a request for all reports related to a specified arrest of a named individual. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on

¹Although you raise section 552.101 of the Government Code in your brief, you make no arguments to support this exception. Therefore, we presume you have withdrawn this argument for the information at issue. *See* Gov't Code §§ 552.301, .302.

your representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See also* 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)(2) of the Government Code.

We note the requestor is a representative of the Texas 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] criminal history record information maintained by the [Department of Public Safety] that relates to a person who:

- (1) is an applicant for or the 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. In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 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). The submitted information contains CHRI. Thus, under sections 411.087(a)(2) and 411.125, the board may have a right of access to CHRI about the named individual contained in the department’s records.

Accordingly, if the named individual 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 requestor is authorized to obtain the named individual’s CHRI contained in the submitted information pursuant to sections 411.087(a)(2) and 411.125 of the Government Code. *See id.* §§ 411.082(2), .087(a)(2), .125(a). 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. 623 at 3 (1994), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 525 at 3 (1989), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, if any of these conditions are met, the department must make available to the requestor any CHRI under sections 411.087 and 411.125. In that instance, with the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, if the individual who is named as the arrested person in the report does not meet any of the criteria in subsections 411.125(1)–(3), then the board does not have a special right of access to the CHRI under sections 411.087 and 411.125. In that event, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

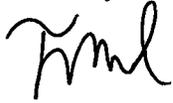
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²We note the basic information includes the arrestee’s social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

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, appearing to read 'T Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 620437

Enc. Submitted documents

c: Requestor
(w/o enclosures)