



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2015

Mr. Daniel Ortiz
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2015-09128

Dear Mr. Ortiz:

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# 563022 (Ref. no. 15-1026-5201).

The El Paso Police Department (the "department") received a request for information related to a named individual, including a specified arrest. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides, in part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

¹Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines are applicable to the information at issue. Therefore, we assume you no longer assert these doctrines. See Gov't Code §§ 552.301, .302.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to an ongoing criminal investigation. You further state, and provide documentation showing, the submitted information pertains to a case pending prosecution with the El Paso County District Attorney's Office. We note, and you acknowledge, the submitted information includes a DIC-24 Statutory Warning. Because a copy of this document was provided to the arrestee, we find you have not demonstrated how release of the DIC-24 form will interfere with the detection, investigation, or prosecution of crime. You further have not demonstrated how release of the DIC-24 form would interfere with law enforcement or prosecution. Accordingly, we agree the DIC-24 form may not be withheld under section 552.108(a)(1) or section 552.108(b)(1). However, based on your representations and our review, we conclude the release of the remaining 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 remaining information at issue.

However, we note, and you acknowledge, 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 DIC-24 form and basic information, the department may generally withhold the remaining information under section 552.108(a)(1) of the Government Code.

However, in this instance, the requestor is an investigator with 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 in pertinent part:

(a) Unless otherwise authorized by Subsection (e), 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 section 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 section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .082(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. 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), 623 at 3 (1994), 525 at 3 (1989). Thus, if any of these conditions are met, the department must make available to the requestor CHRI under section 411.087. In that instance, with the exception of the DIC-24 form and basic information, the department may withhold the remaining information under section 552.108(a)(1) 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 section 411.087. In that event, with the exception of the DIC-24 form and basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

We note the DIC-24 form contains information subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.² See Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information in the DIC-24 form under section 552.130 of the Government Code.

In summary, if the board has a right of access pursuant to sections 411.125 and 411.087(a) of the Government Code, the department must make available to the requestor CHRI under section 411.087, but, with the exception of the DIC-24 form and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. If the board does not have a right of access pursuant to sections 411.125 and 411.087 then, with the exception of the DIC-24 form and basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In either event, the department must withhold the motor vehicle record information in the DIC-24 form under section 552.130 of the Government Code.³

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, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³As our ruling is dispositive, we need not address the remaining argument against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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, appearing to read 'Joseph Behnke', is written over a horizontal line. The signature is stylized and somewhat cursive.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 563022

Enc. Submitted documents

c: Requestor
(w/o enclosures)