



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 5, 2016

Mr. Richard A. McCracken
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-02802

Dear Mr. McCracken:

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# 597072 (PIR No. W047281).

The Fort Worth Police Department (the "department") received a request for a specified police report. You state the department has released some of the requested information to the requestor. 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) 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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may

withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You inform us, and provide an affidavit stating, the Tarrant County District Attorney's Office (the "district attorney's office") has advised the submitted information relates to a pending prosecution, and release of that information would interfere with the prosecution of the case. Based upon this representation, we conclude the release of the remaining information 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.

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

In this instance, however, the requestor may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides that "[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information maintained by the [Department of Public Safety] about a person." *See* Gov't Code § 411.089(a). 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 [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). We note "criminal history record information" 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, the submitted information in this instance contains “criminal history record information.” However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent the requestor in this instance is a “criminal justice agency,” it is authorized to obtain criminal history record information from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov’t Code §§ 411.083(c), .087(a)(2).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” *Id.* § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” *Crim. Proc. Code art. 60.01(1).*

In this case, the requestor is an examiner at the Federal Bureau of Investigation’s National Instant Criminal Background Check System. Although it appears the requestor is engaged in the administration of criminal justice under chapter 411, we cannot determine whether she intends to use the criminal history record information for a criminal justice purpose. Consequently, if the department determines the requestor intends to use the criminal history record information for a criminal justice purpose, we conclude the department must make available to the requestor the criminal history record information from the documents, otherwise subject to section 552.108, that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of the basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. However, if the department determines the requestor does not intend to use the criminal history record information for a criminal justice purpose, then the requestor does not have a right of access to the submitted criminal history record information pursuant to chapter 411. In that case, with the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In either instance, the department must release the basic 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.

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 dark ink, appearing to read "Lee Seidlits", with a stylized flourish at the end.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 597072

Enc. Submitted documents

c: Requestor
(w/o enclosures)