



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 25, 2016

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

OR2016-19234

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# 624278 (ORR# 1364).

The Lubbock Police Department (the "department") received a request for offense report number 16-10294. 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)(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 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 an open criminal investigation. Based on your representation, 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

¹Although you also raise section 552.101 of the Government Code, you have not provided any argument to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See Gov't Code* §§ 552.301, .302.

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 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 is an investigator with the Texas State 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 (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 board does not indicate, and we are not otherwise able to determine, whether the suspect 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 suspect. Accordingly, we must rule in the alternative. If the suspect 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 suspect, then the board is authorized to obtain the suspect's CHRI in the submitted information pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .125. In that instance, CHRI pertaining to the suspect must be released to the requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the suspect 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, and is not subject to investigation by the board in connection with a complaint or formal charge against the suspect, then the board is not authorized to obtain the suspect's CHRI in the submitted information pursuant to section 411.087(a)(2) of the Government Code, and the department need not release such information to this requestor.

In summary, with the exception of the basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code; however, if the board has a right of access to CHRI pursuant to section 411.087(a)(2) of the Government Code, then the department must also release CHRI pertaining to the suspect.

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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 624278

Enc. Submitted documents

c: Requestor
(w/o enclosures)