



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2017

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2017-14381

Dear Mr. Kopp:

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# 663988 (COSA File No. W164836).

The City of San Antonio (the "city") received a request for a specified incident report involving a named individual. 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 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 relates to a pending 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 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, we conclude section 552.108(a)(1) is applicable to the submitted information.

However, 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, which must be released, the city may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.

However, we note 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 (the "DPS")] criminal history record information maintained by the [DPS] 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 or subchapter E-1 to obtain from the [DPS] criminal history record information maintained by the [DPS] 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 city'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), 623 at 3 (1994), 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 city must make available to the requestor CHRI of the named individual under section 411.087. In that instance, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. However, if the named individual 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 basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In either instance, the city must release basic information to the requestor.

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/sb

Ref: ID# 663988

Enc. Submitted documents

c: Requestor
(w/o enclosures)