



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2017

Mr. S. Anthony Safi
Counsel for the El Paso Independent School District
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
P.O. Box 1977
El Paso, Texas 79999-1977

OR2017-17539

Dear Mr. Safi:

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# 669436 (EPISD ORRs 255-051217 and 274-052217).

The El Paso Independent School District (the "district"), which you represent, received two requests from different requestors for a specified incident report. You state the district has released or will release some information to the requestors. 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 pertains to an active criminal investigation being conducted by the district's police department. Based on your representation and our review, 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, 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state has been or will be released, the district may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.

However, we note the first requestor is a representative of the United States Department of Justice, Federal Bureau of Prisons (the "FBP"), and may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record information [(“CHRI”)] maintained by the [Texas Department of Public Safety] about a person.” See Gov't Code § 411.089(a). In addition, section 411.087(a)(2) of the Government Code provides the following:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Texas Department of Public Safety] [CHRI] maintained by the [Texas Department of Public Safety] 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). We note 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, the information at issue contains CHRI about the named individual. However, a criminal justice agency that receives CHRI 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 CHRI). 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). Therefore, to the extent the requestor represents a “criminal justice agency,” he is authorized to obtain CHRI from the

district pursuant to section 411.087(a)(2) of the Government Code. *See* Gov't Code §§ 411.083(c), .087(a)(2).

Section 411.082 defines a “criminal justice agency” as including “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.” Gov't Code § 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 defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, 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 [CHRI].” Crim. Proc. Code art. 60.01(1).

We find the FBP is a criminal justice agency for purposes of chapter 411 of the Government Code. However, we are unable to determine whether the first requestor intends to use the requested CHRI for a criminal justice purpose. Consequently, if the district determines the first requestor intends to use the CHRI for a criminal justice purpose, then the district must release the information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions to the first requestor. Conversely, if the district determines the first requestor does not intend to use the CHRI for a criminal justice purpose, then the first requestor does not have a right of access to the submitted CHRI pursuant to chapter 411.

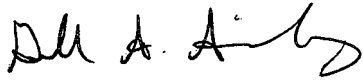
In summary, with the exception of basic information, which you state has been or will be released, the district may generally withhold the submitted information under section 552.108(a)(1) of the Government Code. However, if the district determines the first requestor intends to use the CHRI for a criminal justice purpose, then the district must also release the information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions to the first 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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first name "Gerald" being the most prominent.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 669436

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)