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ATTORNEY GENERAL OF TEXAS

September 16, 2019

Mr. Charles D. Olson
Counsel for the City of McGregor
Haley & Olson, P.C.
100 North Ritchie Road, Suite 200
Waco, Texas 76712-8544

OR2019-25946

Dear Mr. Olson:

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# 785783.

The McGregor Police Department (the "department"), which you represent, received a request for information pertaining to a specified case number 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). Generally, 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 information at issue pertains to an ongoing criminal investigation. Based on your representations 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 information at issue.

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 177 at 186-88; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, 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.

However, we note, and you acknowledge, the requestor is a representative of the Regulatory Services Division of the Texas Health and Human Services Commission (the “commission”), and thus may have a right of access to some of the submitted information. Section 411.122(a) of the Government Code provides, in part:

[A]n agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by [DPS] that relates to a person who:

- (1) is an applicant for a license from the agency;
- (2) is the holder of a license from the agency; or
- (3) requests a determination of eligibility for a license from the agency.

Gov’t Code § 411.122(a). We note the commission is subject to section 411.122(a). See *id.* § 411.122(d)(8). In addition, section 411.087(a) of the Government Code provides, in pertinent part, the following:

[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 information contains CHRI pertaining to the individual named in the request. However, the requestor does not indicate, and we are not otherwise able to determine, whether the individual named in the request is an applicant for a license from the commission, is the holder of a license from the commission, or is requesting a determination of eligibility for a license from the commission. Thus, we must rule in the alternative. If the individual named in the request is an individual described by

section 411.122 of the Government Code, then the requestor is authorized to obtain the named individual's CHRI contained in the submitted information and it must be released to this requestor. Although you raise section 552.108 of the Government Code for such information, a specific statutory right of access prevails over the general exceptions in the Act. See Open Records Decision Nos. 623 at 4 (1994), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 525 at 3 (1989), 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 individual named in the request is not an individual described by section 411.122 of the Government Code, then the requestor does not have a right of access to the named individual's CHRI and the department need not release it. In that instance, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 785783

Enc. Submitted documents

c: Requestor
(w/o enclosures)