



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2020

Mr. Ryan Brooke
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2020-25537

Dear Mr. Brooke:

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# 848558 (City File No. 2827).

The City of Lubbock (the "city") received a request for two specified incident reports involving two named individuals. 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)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state the submitted information pertains to criminal cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the

¹ Although you also raise section 552.101 of the Government Code in your brief, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* 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, the city may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

We note, however, the requestor is a representative of the United States Air Force (the “Air Force”). 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 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 represents a “criminal justice agency,” she is authorized to obtain criminal history record information from the city 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(b)(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 66.001 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 66.001 of the Code of Criminal Procedure defines “administration of criminal justice” as the “the 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.” Code Crim. Proc. art. 66.001(1).

Although it appears the Air Force is engaged in the administration of criminal justice under chapter 411 in this instance, we cannot determine whether the requestor intends to use the criminal history record information for a criminal justice purpose. Consequently, if the city determines the Air Force intends to use the criminal history record information for a criminal justice purpose, we conclude the city must make available to the requestor the criminal history record information from the documents 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 basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, if the city determines the Air Force 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 basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/gw

Ref: ID# 848558

Enc. Submitted documents

c: Requestor
(w/o enclosures)