



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 14, 2020

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2020-25889

Dear Ms. Pemberton:

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# 848913 (ORR# W032996).

The Killeen Police Department (the "department") received a request for information related to the specified arrest of a named individual. You state the department released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to the submitted information.

As you acknowledge, 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 information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ*

ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of basic information, the department may generally withhold the information under section 552.108(a)(2).

We note, however, as a representative of the Texas Army National Guard, we understand the requestor is also a representative of the adjutant general of the Texas military forces and has a right of access to some of the information at issue. Section 411.121(b)(3) of the Government Code provides, “[t]he adjutant general is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by [DPS] that relates to a person who is: . . . (3) an applicant for enlistment in the Texas military forces[.]” Gov’t Code § 411.121(b)(3). See also *id.* § 437.001(2) (“[a]djutant general’ means the military commander of the Texas military forces”), (13) (“Texas Military Department’ means the state agency charged with administrative activities in support of the Texas military forces”), (14) (“Texas military forces’ means the Texas National Guard, the Texas State Guard, and any other military force organized under state law”), (15) (“Texas National Guard’ means the Texas Army National Guard and the Texas Air National Guard”). In addition, section 411.087(a)(2) of the Government Code reads as follows:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS] [CHRI] maintained by [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). The requestor states he is seeking information about an applicant for enlistment with the Texas National Guard. Thus, the requestor is authorized to obtain the submitted CHRI pursuant to sections 411.087(a)(2) and 411.121(b)(3). See *id.* §§ 411.087(a)(2), .121(b)(3). 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). Consequently, the department must release the submitted CHRI to this requestor pursuant to sections 411.087(a)(2) and 411.121(b)(3).

In summary, the department must release the submitted CHRI pursuant to sections 411.087(a)(2) and 411.121(b)(3) of the Government Code. With the exception of basic information, which you state the department has released, the department may withhold the remaining 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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/rm

Ref: ID# 848913

Enc. Submitted documents

c: Requestor
(w/o enclosures)