



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2020

Mr. Craig M. Price
Assistant District Attorney
Grayson County Criminal District Attorney's Office
200 South Crockett Street, Suite 116A
Sherman, Texas 75090

OR2020-30494

Dear Mr. Price:

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# 856915.

The Grayson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named individual. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

Section 552.108(a) 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: (1) 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 information at issue 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, 710 (Tex. 1977). The sheriff's office states the submitted information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information

¹ Although the sheriff's office also raises section 552.152 of the Government Code, it has not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume the sheriff's office no longer asserts this exception. *See* Gov't Code §§ 552.301, .302. We also note the city claims the informer's privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *see also* Gov't Code §552.022(a). Section 552.022 is not applicable to the information at issue and, therefore, we do not address the argument of the sheriff's office under rule 508.

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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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 the *Houston Chronicle* decision. *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* decision). Thus, with the exception of basic information, the sheriff's office may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.²

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). Upon review, we find the sheriff's office has failed to establish the informer's privilege is applicable to the basic information. Therefore, the sheriff's office may not withhold any of the basic information under section 552.101 on that ground.

The requestor is with the Texas Board of Nursing (the “board”). Section 411.125 of the Government Code provides the following:

[The board] 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 or the holder of a license issued by the board;

² As our ruling is dispositive, we do not address the other arguments of the sheriff's office to withhold the submitted information, except to note basic information may not be withheld from public disclosure under section 552.103. *See* Open Records Decision No. 597 at 2-3 (1991).

(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)(2) of the Government Code reads as follows:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter 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.” *Id.* § 411.082(2). Thus, under sections 411.125 and 411.087, the requestor may have a right of access to any CHRI about the named individual contained in the its 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 CHRI from the sheriff’s office pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .082(2), .125(a). A specific statutory right of access overcomes the general exceptions in the Act, such as sections 552.103 and 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, 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 sheriff’s office must release CHRI pertaining to the named individual pursuant to section 411.087(a)(2) of the Government Code. If the named individual does not meet any of the criteria of section 411.125, then the department is not required to release the CHRI of the named individual on that ground.

To conclude, with the exception of basic information, which the sheriff’s office must release, the sheriff’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, 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 sheriff’s office must release

the CHRI pertaining to the named individual pursuant to section 411.087(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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/rm

Ref: ID# 856915

Enc. Submitted documents

c: Requestor
(w/o enclosures)