



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 23, 2022

Mr. Marti Samuel
Assistant City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2022-29418

Dear Mr. Samuel:

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# 973745 (Ref. No. W039751).

The Killeen Police Department (the “department”) received a request for information pertaining to a specified arrest of a named individual. The department states it has released some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the claimed exception 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). The department states the submitted information pertains to a pending criminal prosecution. Based upon this representation, 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.

¹ Although the department also raises section 552.101 of the Government Code in conjunction with common-law privacy for the submitted information, the department provides no argument explaining how this doctrine applies to the information at issue. Therefore, we assume the department no longer asserts this doctrine. *See* Gov’t Code §§ 552.301, .302.

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 at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.

In this instance, however, the requestor is a representative of the United States District Court Probation and Pretrial Services for the Western District of Texas (the "probation office") and may have a right of access to some of the submitted information. Section 411.089(a) of the Government Code provides "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (the "DPS")] any criminal history record information ["CHRI"] maintained by the [DPS] about a person." Gov't Code § 411.089(a). Additionally, section 411.087(a) of the Government Code provides, in part:

(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." *Id.* § 411.082(2).

The submitted documents contain CHRI pertaining to 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). Thus, if the probation office is a "criminal justice agency," then the probation office is authorized to obtain CHRI pertaining to the named individual from the department 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(a)(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 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 "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 [CHRI].” Crim. Proc. Code art. 66.001(1).

We understand the probation office is a criminal justice agency as defined by section 411.082. *See* Gov’t Code § 411.082(3)(A). We also understand the information at issue will be used for criminal justice purposes. Thus, the department must make CHRI pertaining to the named individual available to the requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). With the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jxd

Ref: ID# 973745

Enc. Submitted documents

c: Requestor
(w/o enclosures)