



March 26, 2002

Mr. Craig Magnuson
Attorney
City of Mansfield
1305 East Broad Street
Mansfield, Texas 76063-1896

OR2002-1501

Dear Mr. Magnuson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160321.

The Mansfield Police Department (the “department”) received a request for information related to a particular felony arrest of a named individual. You state that you have released some responsive information to the requestor. You claim that the remaining requested 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.

As an initial matter, we note that “information that is also contained in a court record” is subject to required public disclosure under section 552.022(a)(17) of the Government Code. Section 552.022(a) of the Government Code provides that this information is not excepted from required disclosure under the Public Information Act unless the information is expressly confidential under other law. Section 552.108 is a discretionary exception which does not constitute other law that makes information subject to section 552.022(a)(17) confidential. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 522 at 4 (1989) (discretionary exceptions in general). Therefore, the submitted court documents that we have marked must be released.

You state that the requested information is excepted under section 552.108 because it relates to felony cases currently under investigation and pending with the Tarrant County District Attorney’s Office. Section 552.108(a)(1) states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is

excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Based upon your representations, we conclude that release of the submitted information 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

In this instance, however, we believe that the requestor has a special right of access to criminal history record information. Section 411.110 of the Government Code specifically grants a right of access for the Department of Health to obtain criminal history record information ("CHRI") from the Department of Public Safety ("DPS"). Section 411.110 provides:

(a) The Texas Department of Health is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the department that relates to a person who is:

- (1) an applicant for a license or certificate under the Emergency Medical Services Act (Chapter 773, Health and Safety Code);
- (2) an owner or manager of an applicant for an emergency medical services provider license under that Act; or
- (3) the holder of a license or certificate under that Act.

Gov't Code § 411.110(a). Furthermore, pursuant to section 411.087 of the Government Code, an agency which is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history information maintained by that [agency]." Gov't Code § 411.087(a)(2); *see also* 25 T.A.C. § 157.37. CHRI consists of "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." Gov't Code § 411.082(2).

In this instance, the requestor identifies himself as an investigator with the Department of Health and states that he is investigating the nature and seriousness of an alleged crime as it relates to EMS personnel certification. The requestor specifically seeks "copies of the offense/incident reports, indictment, and/or information/complaint" regarding a specified offense for which the named individual has been arrested. We conclude that when read together, sections 411.087 and 411.110 of the Government Code give the Department of

Health a statutory right of access to some of the submitted information. *See* Gov't Code § 411.082(2). Therefore, the department must release information from the submitted 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 Public Information Act). The remainder of the submitted information, with the exception of the marked court documents, may be withheld under section 552.108.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 160321

Enc. Submitted documents

c: Mr. Anthony Luna
EMS Investigator
Bureau of Emergency Management
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199
(w/o enclosures)