



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2006

Ms. Sylvia McClellan  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2006-12399

Dear Ms. McClellan:

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# 262445.

The Dallas Police Department (the "department") received a request for information related to a specified incident. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim 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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information pertains to a pending case. Based on this representation, we conclude that the release of this 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 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559

(Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore agree that section 552.108(a)(1) is generally applicable to the information you have marked.

In this instance, however, the requestor is an Enforcement Specialist with the Texas State Board of Pharmacy (the "board"). Section 411.122(a) of the Government Code provides that

an agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who: (1) is an applicant for a license from the agency; (2) is the holder of a license from the agency; or (3) requests a determination of eligibility for a license from the agency.

Gov't Code § 411.122(a). We note that the board is specifically subject to section 411.122 of the Government Code. *See id.* § 411.122(d)(14). 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).

"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). In this instance, the submitted information contains "criminal history record information."

We understand that the arrestee in the submitted information is a holder of a license from the board. Accordingly, the board is authorized to obtain criminal history record information in the submitted information pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .122(a). Consequently, criminal history record information in the information must be released to the requestor. *See* Open Records Decision No. 451 (1986)

(specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Furthermore, 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 Publishing Co.*, 531 S.W.2d at 177. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes identification and description of the arrestee and complainant, names of arresting officers, and a detailed description of the offense. See *Houston Chronicle*, 531 S.W.2d 177 at 187. Therefore, with the exception of criminal history record information and basic information, the department may withhold the information you have marked under section 552.108 of the Government Code.<sup>1</sup> We note that the department has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

The remaining information contains the arrestee's social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147.<sup>2</sup> Therefore, the department must withhold the arrestee's social security number pursuant to section 552.147.<sup>3</sup>

In summary, other than basic information and criminal history record information to which the requestor has a right of access under section 411.087(a)(2) of the Government Code, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the arrestee's social security number under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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

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<sup>1</sup>As our ruling on this issue is dispositive, we need not address your remaining arguments under section 552.101 of the Government Code.

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions like section 552.147 on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/dh

Ref: ID# 262445

Enc. Submitted documents

c: Mr. Robert Rivera  
Enforcement Specialist  
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(w/o enclosures)