



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2007

Mr. Asem Eltiar
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2007-07632

Dear Mr. Eltiar:

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# 281273.

The Arlington Police Department (the "department") received a request for a specified police report. You claim that the 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.

Section 552.108(a)(1) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the submitted information relates to a pending criminal investigation. Based upon this representation, and our review, 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 (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).

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Thus, the department must release the types of information that are considered to be front page information, even if this information is not actually located on the front page. *See Open*

Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*).

In this instance, we must note that the requestor is a representative of the Board of Nurse Examiners for the State of Texas (the "board"). Section 411.125 of the Government Code provides that

(a) The [board] 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 or holder of a license issued by the board;
- (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(a). 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 report contains "criminal history record information."

Accordingly, if the individual who is named as the arrestee in the submitted report 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 the criminal history record information in the submitted report from the department pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2),

.125(a). Consequently, if any of these conditions is met, then the department must make available to the requestor the criminal history record information, as well as the basic information. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). The remainder of the report may be withheld under section 552.108 of the Government Code.

If, however, the individual who is named as the arrestee in the submitted report does not meet any of the conditions of subsection 411.125(a)(1)-(3), then the requestor does not have a special right of access to the criminal history record information under section 411.087. In that case, the department may withhold the submitted report, releasing only basic information.

In summary, if the individual listed as the arrestee in the submitted report meets one of the conditions listed in subsection 411.125(a)(1)-(3), then the department must release the criminal history record information and basic information contained in the submitted report to this requestor; the remainder of the report may be withheld under section 552.108 of the Government Code. If, however, the individual listed as the arrestee in the submitted report does not meet any of these conditions, then with the exception of the basic information, the department may withhold the submitted report under section 552.108.¹

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, 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

¹We note that the submitted information contains a social security number. 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.

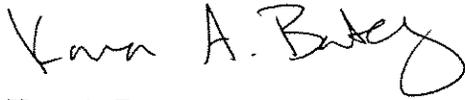
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/mcf

Ref: ID# 281273

Enc. Submitted documents

c: Mr. Jesse Thibodeau
Enforcement Department
Texas Board of Nurse Examiners
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(w/o enclosures)