



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2009

Ms. Deborah Pullum
Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2009-14516

Dear Ms. Pullum:

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# 358220.

The Tyler Police Department (the "department") received a request from an investigator for the Texas Education Agency (the "TEA") for information relating to a specified case involving a named individual. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information, which we have marked, is not responsive to the present request because it does not pertain to the case specified by the requestor. The department need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we note that the submitted documents include CR-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental body is required to release a copy of an accident report to a person who

provides the governmental body with two or more items of information specified by the statute. *Id.* In this instance the requestor has provided the department with two of the required items of information. Thus, the department must release the accident report forms under section 550.065(c)(4) of the Transportation Code.

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 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.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the submitted information includes a statutory warning and a notice of suspension. Because copies of these documents, which we have marked, have been provided to the arrestee, we find that their release will not interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code § 552.108(a)(1)*. Accordingly, the statutory warning and notice of suspension may not be withheld under section 552.108. You state the remaining responsive information relates to a pending criminal investigation and prosecution. Based on your representations and our review of the information at issue, we conclude that the release of the remaining responsive 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).

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the statutory warning, notice of suspension, and basic information, the department may generally withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.¹

We next note that the statutory warning and notice of suspension contain a Texas driver’s license number. Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130. The department must withhold the Texas driver’s license number we have marked pursuant to section 552.130 of the Government Code.

¹As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure.

We also note that the basic information contains the social security number of the arrestee. 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. *Id.* § 552.147. The department may withhold the social security number of the arrestee you have marked under section 552.147 of the Government Code.

Next, we must address whether the requestor has access to the information subject to section 552.108(a)(1). As noted above, the requestor is an investigator for the TEA, which has assumed the duties of the State Board for Educator Certification (the “SBEC”).² Section 22.082 of the Education Code provides that the SBEC “may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate.” Educ. Code § 22.082. Section 411.090 of the Government Code grants a right of access for the SBEC to obtain criminal history record information (“CHRI”) from the Department of Public Safety (“DPS”) on persons who have applied to the SBEC. *See* Gov’t Code § 411.090. Additionally, section 411.0901 of the Government Code specifically provides the TEA with a right of access to obtain CHRI maintained by DPS on certain school employees or applicants for employment. *See id.* § 411.0901. Furthermore, pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency].” *Id.* § 411.087(a)(2). CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2).

We find that, when read together, section 22.082 of the Education Code and section 411.087 of the Government Code give the TEA a statutory right of access to portions of the submitted information. *See id.*; *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Accordingly, we conclude that the department must release information from the submitted documents to this requestor that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions.³ *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act).

²The 79th Texas Legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to the TEA, effective September 1, 2005.

³We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

In summary, the department must release the accident report forms under section 550.065(c)(4) of the Transportation Code. The department must also release information from the submitted documents that show the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, pursuant to section 22.082 of the Education Code. Except for the statutory warning, notice of suspension, and basic information, the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code. In releasing the statutory warning and the notice of suspension, the department must withhold the Texas driver's license number we have marked pursuant to section 552.130 of the Government Code. In releasing the basic information, the department may withhold the social security number of the arrestee you have marked under section 552.147.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 358220

Enc. Submitted documents

c: Requestor
(w/o enclosures)