



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2011

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2011-00126

Dear Mr. Weir:

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# 405376 (COSA File No. 2010-6838).

The San Antonio Police Department (the "department") received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a named individual and five specified police reports. You state the department was only able to locate report nos. 2003-198246 and 2010-795303.¹ You state the department will release report no. 2003-198246 and the basic information for report no. 2010-795303. You claim report no. 2010-795303 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) 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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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). You state report no. 2010-795303 relates to a pending criminal investigation and prosecution. Based on your representations and our review of the information at issue, 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).

We note, and you acknowledge, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, the department may generally withhold report no. 2010-795303 under section 552.108(a)(1).

Next, we must address whether the requestor has access to the information subject to sections 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).

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.

We find, 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 report no. 2010-795303. *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 the department must release information from report no. 2010-795303 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).

We note report no. 2003-198246, which the department states it will release, contains Texas motor vehicle information. Section 552.130 of the Government Code 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[.]” *Id.* § 552.130(a)(1), (2). While the information we have marked in report no. 2003-198246 is generally confidential under section 552.130 of the Government Code, we will consider the requestor’s possible right of access to this information.

As previously noted, the TEA has a right of access under section 22.082 to all records contained in a closed criminal investigation file that involves the named individual as a suspect or arrestee. Educ. Code § 22.082. You have submitted report no. 2003-198246 which involves the named individual as a suspect and appears to be a closed criminal investigation file. However, because section 22.082 authorizes the requestor to obtain report no. 2003-198246 while section 552.130 of the Government Code excepts from disclosure the information we have marked in this report, section 22.082 conflicts with section 552.130. Where statutes are in irreconcilable conflict, the specific provision prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See id.* § 311.026(b), *City of Lake Dallas v. Lake Cities Mun. Util Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.).

As a general rule, the Act’s general exceptions to required public disclosure are not applicable to information that a statute other than the Act expressly makes public. *See* Open Records Decision No. 623 at 3 (1994). However, section 552.130 of the Government Code specifically protects Texas motor vehicle record information and contains its own access provisions. Therefore, we find section 552.130 is not a general exception under the Act. Furthermore, because section 552.130 specifically protects specified information while

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.

section 22.082 provides the TEA with a general right of access, we find the confidentiality provision found in section 552.130 is more specific than the general right of access provided to the TEA under section 22.082. Accordingly, we conclude the department must withhold the information within this report marked under section 552.130 of the Government Code, but must release the remainder of this report to this requestor pursuant to section 22.082.

In summary, the department must release information from report no. 2010-795303 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. The department must withhold the information within report no. 2003-198246 marked under section 552.130 of the Government Code, but must release the remainder of this report to this requestor pursuant to section 22.082.

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) S673-6839. 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/vb

Ref: ID# 405376

Enc. Submitted documents

c: Requestor
(w/o enclosures)