



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2011

Ms. Lysia H. Bowling
City Attorney
City of San Angelo
PO Box 1751
San Angelo, Texas 76902

OR2011-13241

Dear Ms. Bowling:

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# 430029.

The San Angelo Police Department (the "department") received a request from an investigator with the Texas Education Agency (the "TEA") seeking all records pertaining to case number 2011-0006506, involving a named individual. You claim the submitted 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) 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(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to an active criminal investigation. Based on your representation, we conclude the 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) (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). Thus, section 552.108(a)(1) is applicable to the information at issue.

We note 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*, and includes a detailed description of the offense. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the information at issue is subject to section 552.108(a)(1) of the Government Code.

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").¹ Therefore, we must address whether the requestor has access to the information subject to section 552.108(a)(1) of the Government Code. The requestor claims section 22.082 of the Education Code gives the SBEC a right to the requested information and indicates the requested information is related to an SBEC investigation of an individual who has applied for or currently holds educator credentials.² Section 22.082 of the Education Code provides 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. In this instance, as noted above, you inform us the submitted information pertains to a criminal investigation file that is considered open. Therefore, we agree the TEA may not obtain "all records contained" in the open investigation file under section 22.082 of the Education Code. However, we must consider whether the TEA may obtain criminal history record information ("CHRI") from the department pursuant to section 22.082 of the Education Code. Section 411.090 of the Government Code grants a right of access for the SBEC to obtain from the Department of Public Safety ("DPS") CHRI 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).

¹The 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.

²The requestor also claims a right to the information at issue under sections 261.308 and 261.406 of the Family Code. However, these statutes apply to information held by the Department of Family and Protective Services and not the department. See Fam. Code §§ 261.308, .406.

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 the information at issue. *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 to this requestor information that shows the types of allegations 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 Act).

In summary, the department must release to this requestor information that shows 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. With the exception of the basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

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,



Bob Davis
Assistant Attorney General
Open Records Division

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³Because the TEA has a right of access to certain information in the submitted documents that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor without such a right of access.

Ref: ID# 430029

Enc. Submitted documents

c: Requestor
(w/o enclosures)