



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2014

Ms. Ana Vieira
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-01501

Dear Ms. Vieira:

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# 512410 (OGC# 153073).

The University of Texas at Dallas (the "university") received a request for a specified report generated by the university's police department (the "department"). You inform us you will release some of the requested information to the requestor. You also inform us you will redact certain information in accordance with section 552.130(c) of the Government Code.¹ 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) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

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, and have submitted a document from the department's Chief of Police affirming, the information you have marked relates to an active criminal case that is pending prosecution. Based upon these representations, we conclude section 552.108(a)(1) is applicable, and the release of the information you have marked 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).

However, as 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). We note basic information includes, among other things, the address of an arrested person and a detailed description of the offense. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, you may generally withhold the information you have marked under section 552.108(a)(1) of the Government Code.²

We note, 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,

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 [(“CHRI”)] 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 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 CHRI] maintained by the [Department of Public Safety] that relates to another person is authorized to:

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI 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). Thus, under sections 411.122 and 411.087, the requestor may have a right of access to any CHRI about the named individual contained in the university’s records. The submitted information contains CHRI about this individual.

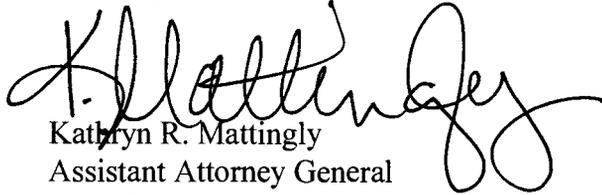
Accordingly, if the individual at issue is an applicant for a license from the board, is a holder of a license from the board, or has requested a determination of eligibility for a license from the board, then the requestor is authorized to obtain the CHRI in the submitted report from the university pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .122(a). Although you raise section 552.108 of the Government Code for such information, a specific statutory right of access overcomes the general exceptions in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, if any of these conditions are met, then the university must make available to the requestor CHRI under section 411.087. In that instance, with the exception of basic information, the university may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code. However, if the individual at issue does not meet any of the criteria of subsection 411.122(a)(1)-(3), then the board does not have a special right of access to the CHRI under section 411.087. In that event, with the exception of basic information, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

In summary, if the board has a right of access pursuant to section 411.087(a)(2) of the Government Code, then the university must make available to the requestor CHRI regarding the named individual under section 411.087 but, with the exception of the basic information, may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code. If the board does not have a right of access to the CHRI under section 411.087 then, with the exception of basic information, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Mattingly', written in a cursive style.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 512410

Enc. Submitted documents

c: Requestor
(w/o enclosures)