



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2014

Ms. Linda Pemberton  
Paralegal  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540

OR2014-11317

Dear Ms. Pemberton:

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# 527776 (Killeen ID# W013170).

The Killeen Police Department (the "department") received a request for information pertaining to a specified case. You state the department released some information to the requestor. 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 release of the information at issue 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 relates to a pending criminal investigation, and release of this information would hinder the investigation. Based on these representations, we conclude section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating

law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, 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 types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which you state the department has released, the department may generally withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code.

However, we note the request indicates the requestor is an investigating officer with the United States Army and, thus, may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (the "DPS")] any criminal history record information [( "CHRI" )] maintained by the [DPS] about a person." Gov't Code § 411.089(a); see also *id.* § 411.083(b)(1) (providing DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a)(2) of the Government Code provides the following:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] 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). 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, the information at issue in this instance contains CHRI. However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. See *id.* §§ 411.083(c), .087(b); see also Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the requestor represents a "criminal justice agency," the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. See Gov't Code §§ 411.083(c), .087(a)(2).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice.” Gov’t Code § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Code Crim. Proc. art. 60.01(1).

We are unable to determine whether the requestor is a representative of a criminal justice agency or whether the requestor intends to use the criminal history record information for a criminal justice purpose. Consequently, if the department determines (1) the requestor is a representative of a criminal justice agency for purposes of chapter 411 and (2) the requestor intends to use the criminal history record information for a criminal justice purpose, then the department must make available to the requestor the criminal history record information from the documents that shows the type of allegation 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 the Act). If, however, the department determines the requestor either is not a representative of a criminal justice agency for purposes of chapter 411 or does not intend to use the criminal history record information for a criminal justice purpose, then the requestor does not have a right of access to the submitted criminal history record information pursuant to chapter 411.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, if the department determines the requestor is a representative of a criminal justice agency and intends to use this information for a criminal justice purpose, pursuant to chapter 411 of the Government Code, the department must release information from the submitted documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions.

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](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 "Miriam A. Khalifa". The signature is fluid and cursive, with a long horizontal stroke at the end.

Miriam A. Khalifa  
Assistant Attorney General  
Open Records Division

MAK/akg

Ref: ID# 527776

Enc. Submitted documents

c: Requestor  
(w/o enclosures)