



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2015

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
Office of the City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

OR2015-04721

Dear Mr. Ortiz:

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# 555980.

The El Paso Police Department (the "department") received a request for information regarding a specified arrest of a named individual. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions 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

¹Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines are applicable to the information at issue. Therefore, we assume you no longer assert these doctrines. *See Gov't Code* §§ 552.301, .302.

state, and have provided documentation demonstrating, the submitted information pertains to a pending criminal prosecution. Based on your representation, 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

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*. *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 department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.

In this instance, however, the requestor is a representative of the Enforcement Division of the Texas State Board of Nursing (the "board"). Section 411.125 of the Government Code provides,

[The board] is entitled to obtain from the [Department of Public Safety (the "DPS")] criminal history record information [{"CHRI"}] maintained by the [DPS] that relates to a person who:

- (1) is an applicant for or the holder of a license by the board;
- (2) has requested a determination of eligibility for a license from the board; or
- (3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

Gov't Code § 411.125. 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 [DPS] [CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

- (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). In this instance, the submitted information contains CHRI. However, the requestor does not indicate, and we are not otherwise able to determine, whether the arrestee in this case is an applicant for or a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge against the arrestee. Accordingly, we must rule in the alternative. If the arrestee is an applicant for or a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge against the arrestee, then the board is authorized to obtain the arrestee’s CHRI in the submitted information pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .125. In that instance, CHRI pertaining to the arrestee must be released to the requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the arrestee in this case is not an applicant for or a holder of a license from the board, has not requested a determination of eligibility for a license from the board, or is not subject to investigation by the board in connection with a complaint or formal charge against the arrestee, then the board is not authorized to obtain the arrestee’s CHRI in the submitted information pursuant to section 411.087(a)(2) of the Government Code, and the department need not release such information to this requestor.

In summary, if the board has a right of access to CHRI pursuant to section 411.087(a)(2) of the Government Code, then with the exception of the basic information and CHRI pertaining to the arrestee, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. If the board does not have such a right of access to CHRI, then with the exception of the basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

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

²As our ruling is dispositive, we need not address the remaining argument against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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 "Kristi L. Godden". The signature is fluid and cursive, with the first name "Kristi" being the most prominent.

Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 555980

Enc. Submitted documents

c: Requestor
(w/o enclosures)