



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 1, 2015

Ms. Audra Gonzalez Welter
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-08493

Dear Ms. Welter:

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# 562007 (OGC No. 160263).

The University of Texas Southwestern Medical Center (the "university") received a request for information pertaining to a specified arrest of a named individual. You state the university has 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)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a concluded investigation conducted by the university's police department that did not result in a conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to the submitted information.

As you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the university may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

We note portions of the basic information may be subject to section 552.1175 of the Government Code.¹ Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). We note the basic information contains the home address of an individual who may have been a licensed peace officer at the time the information at issue was created. However, we are unable to determine from the information provided whether the individual at issue is currently a licensed peace officer. Thus, we must rule conditionally. Accordingly, to the extent the information at issue, which we have marked, relates to an individual who is currently a licensed peace officer and who elects to restrict access to the information in accordance with section 552.1175(b), the university must withhold the information we have marked under section 552.1175 of the Government Code. Conversely, if the individual whose information is at issue is not currently a licensed peace officer or does not elect to restrict access to this information in accordance with

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.1175(b), the university may not withhold the information we have marked under section 552.1175.

We further note the requestor is a representative of the Probation and Pretrial Service Office of the United States District Court for the Northern District of Texas (the “probation office”) and may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record information [(“CHRI”)] maintained by the [Texas Department of Public Safety] about a person.” *See id.* § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part the following:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Texas Department of Public Safety] [CHRI] maintained by the [Texas Department of Public Safety] 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). We note 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 submitted information contains CHRI. We understand the requestor represents a criminal justice agency. *See id.* § 411.082(3)(A) (defining “criminal justice agency” 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”). 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 criminal history record information). Thus, the requestor is authorized to obtain the named individual’s 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).

We understand the probation office is a criminal justice agency as defined by section 411.082. *See id.* Although we understand the probation office is engaged in the administration of criminal justice under chapter 411, we cannot determine whether the requestor intends to use the CHRI for a criminal justice purpose. Consequently, if the university determines the requestor intends to use the CHRI for a criminal justice purpose,

then the university must release the named suspect's CHRI 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). In that event, with the exception of basic information, which generally must be released, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code. But if the university determines the requestor does not intend to use the CHRI for a criminal justice purpose, then, with the exception of basic information, which generally must be released, the university may withhold the submitted information under section 552.108(a)(2) of the Government Code. In either event, in releasing basic information, the university must withhold the information we have marked under section 552.1175 if it pertains to an individual who is a currently-licensed peace officer and who elects to restrict access to the information in accordance with section 552.1175(b).

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 562007

Enc. Submitted documents

c: Requestor
(w/o enclosures)