



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 2, 2015

Mr. David V. Overcash
Assistant City Attorney for the City of Anna
Wolfe, Tidwell & McCoy, L.L.P.
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2015-13294

Dear Mr. Overcash:

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# 569864 (File No. C03029PIR20150413-01).

The Anna Police Department (the "department"), which you represent, received a request for all information pertaining to the specified arrest of a named individual. You state the department will redact information pursuant to section 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).¹ You claim the portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the 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, 710 (Tex. 1977). The department states the information it has marked relates to a pending criminal

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

investigation and prosecution. Based on this 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, 186-87 (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). Therefore, the department may generally withhold the information you have marked under section 552.108(a)(1) of the Government Code.²

However, in this instance, the requestor is an investigator with the Texas 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] criminal history record information maintained by the [Department of Public Safety] that relates to a person who:

- (1) is an applicant for or the holder of a license issued 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) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] 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). “Criminal history record information” (“CHRI”) is defined as “information collected about a person by a criminal justice agency that consists of

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

identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Thus, under section 411.125, the board may have a right of access to CHRI about the named individual contained in the department’s records.

Accordingly, if the named individual is an applicant for a license from the board, 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, then the requestor is authorized to obtain the named individual’s CHRI contained in the submitted information pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .082(2), .125(a). We note a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *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), 623 at 3 (1994), 525 at 3 (1989). Thus, if any of these conditions are met, the department must make available to the requestor CHRI under section 411.087. In that instance, the department may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code. However, if the individual who is named as the arrested person in the report does not meet any of the criteria in subsections 411.125(1)-(3), then the board does not have a special right of access to the CHRI under section 411.087. In that event, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov’t Code § 411.089(b)(1). The remaining information contains Federal Bureau of Investigation (“FBI”) numbers that constitute CHRI generated by the FBI. Therefore, the department must withhold the FBI numbers you have indicated under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the department must

withhold the motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

In summary, if the board has a right of access pursuant to sections 411.125 and 411.087(a) of the Government Code, the department must make available to the requestor CHRI under section 411.087, but the department 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 pursuant to sections 411.125 and 411.087, then the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. In either event, the department must: (1) withhold the FBI numbers you have indicated under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law; (2) withhold the motor vehicle record information you have marked and we have marked under section 552.130 of the Government Code; and (3) release the remaining information.

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 569864

Enc. Submitted documents

c: Requestor
(w/o enclosures)