



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 4, 2015

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

OR2015-23180

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# 587300 (ORR# W017179).

The Killeen Police Department (the "department") received a request for two specified incident reports. The department states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception 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 information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department states the submitted information pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

However, the requestor is a police officer with the Copperas Cove Police Department and he indicates he is seeking background information about an individual who has applied to become a dispatch operator with that police department. Section 411.089(a) of the Government Code provides, “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record information maintained by the [Texas Department of Public Safety] about a person.” *See* Gov’t Code § 411.089(a). 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 or Subchapter E-1 to obtain from the [Texas Department of Public Safety] criminal history record information 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 criminal history record information maintained by that criminal justice agency that relates to that person.

Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4327, 4337-4338 (to be codified as an amendment to Gov’t Code § 411.087(a)(2)). We note “criminal history record information” 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* Gov’t Code § 411.082(2). Thus, the information at issue contains criminal history record information involving the named individual. However, a criminal justice agency that receives criminal history record information 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). 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). Therefore, to the extent the requestor represents a “criminal justice agency,” he is authorized to obtain

criminal history record information from the department pursuant to section 411.087(a)(2) of the Government Code. *See* Gov't Code §§ 411.083(c), .087(a)(2).

Section 411.082 defines a "criminal justice agency" as including "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." *Id.* § 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 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." Crim. Proc. Code art. 60.01(1). Section 411.082(4)(B) of the Government Code defines "[c]riminal justice purpose" to include "screening of applicants for employment with a criminal justice agency." Gov't Code § 411.082(4)(B).

We understand the requestor is a representative of a criminal justice agency as defined by section 411.082 and is engaged in the administration of criminal justice under chapter 411 of the Government Code. *See id.* § 411.082(3)(A); Crim. Proc. Code art. 60.01(1). As noted above, the requestor is seeking background information about an individual who has applied to become a dispatch operator with that police department. Upon review, we find the requestor intends to use the criminal history record information for a criminal justice purpose. *See* Gov't Code § 411.082(4)(B). Therefore, pursuant to section 411.087(a)(2) of the Government Code, the department must release the submitted information involving the named individual that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions.

To conclude, the department must release the submitted information involving the named individual that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 411.087(a)(2) of the Government Code. With the exception of basic information, which the department states it has released, the department may withhold the remaining information under section 552.108(a)(2) 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 587300

Enc. Submitted documents

c: Requestor
(w/o enclosures)