



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2015

Mr. Justin Pruitt
Assistant City Attorney
Office of the City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2015-25373

Dear Mr. Pruitt:

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# 589400 (ORR# 1218).

The Lubbock Police Department (the "department") received a request from an investigator with the Texas Education Agency (the "TEA") for all information pertaining to a named individual and a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ 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 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 for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

state the submitted information pertains to a pending criminal investigation. Based on your representation, we conclude the release of the submitted information 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.

However, 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.

However, we must address whether the requestor has a right of access to any portion of the information at issue. In this instance, the requestor is an investigator for the TEA, which has assumed the duties of the State Board for Educator Certification (the "SBEC").² The requestor states the TEA is conducting an investigation of a named individual who either has applied for or currently holds educator credentials. As mentioned above, the submitted information pertains to a pending criminal investigation. Section 22.082 of the Education Code provides the SBEC "may obtain from any law enforcement or criminal justice agency all criminal history record information ["CHRI"] and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21 [of the Education Code]." Educ. Code § 22.082. Section 411.090 of the Government Code grants the SBEC a right of access to obtain CHRI from the Texas Department of Public Safety (the "DPS") regarding persons who have applied to the SBEC. *See* Gov't Code § 411.090. Additionally, section 411.0901 of the Government Code specifically provides the TEA with a right of access to obtain CHRI maintained by the DPS regarding certain school employees or applicants for employment. *See id.* § 411.0901. Pursuant to section 411.087 of the Government Code, an agency entitled to obtain CHRI from the DPS also is authorized to "obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency]." *Id.* § 411.087(a)(2). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions." *Id.* § 411.082(2).

We find, when read together, sections 22.082 of the Education Code and 411.087 of the Government Code give TEA a statutory right of access to portions of the information at

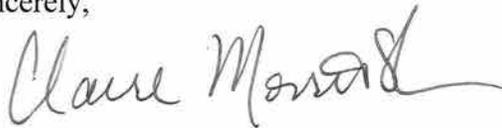
²The 79th Texas Legislature passed House Bill 1116, which required the transfer of the SBEC's administrative functions and services to the TEA, effective September 1, 2005.

issue. *Cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Thus, we conclude the department must release to this requestor information that shows the types of allegations 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 Act). With the exception of basic information, which must also be released, the department may withhold the remaining information under section 552.108(a)(1) 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 589400

Enc. Submitted documents

c: Requestor
(w/o enclosures)