



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2016

Ms. Mary Kay Fischer
City Attorney
City of Angleton
121 South Velasco
Angleton, Texas 77515

OR2016-00797

Dear Ms. Fischer:

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# 594362.

The Angleton Police Department (the "department") received a request for all records pertaining to a specified address over a specified time period, including records involving two named individuals. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

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[.]" *Id.* § 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 state, and provide documentation showing, the submitted information pertains to a murder case currently on appeal and, we understand, as of the date the department received the

instant request, the mandate of the Court of Criminal Appeals had yet to be issued. Based on these representations, 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.

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.¹

However, we note the requestor is a representative of the Office of Capital and Forensic Writs (the "OCFW"). Section 411.1272 of the Government Code provides:

The office of capital and forensic writs [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 criminal case in which an attorney compensated by the office of capital and forensic writs . . . has been appointed.

Gov't Code § 411.1272. In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 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.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue, 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).

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 identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2).

The requestor states the OCFW was appointed to represent a named individual in his post-conviction review proceedings in connection with the criminal case at issue, which you inform us is pending appeal before the Texas Court of Criminal Appeals. Accordingly, the requestor is authorized to obtain the CHRI in the submitted information from the department pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code. *See id.* §§ 411.087(a)(2), .1272. Although you claim this information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See, e.g.*, 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 exception to disclosure under the Act). Accordingly, the department must release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions to the requestor. With the exception of basic information, which must 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 594362

Enc. Submitted documents

c: Requestor
(w/o enclosures)