



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 12, 2016

Ms. Jennifer Burnett
Attorney
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2016-00855

Dear Ms. Burnett:

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# 593726 (OGC# 165333).

The University of Texas Southwestern Medical Center (the "center") received a request for a specified incident report. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. Additionally, you provide correspondence from the Dallas County District Attorney's Office (the "district attorney's office"), which claims the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.108(a) 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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case

and a representation from the law enforcement agency that it wishes to have the information withheld. You provide documentation from the district attorney's office stating it objects to release of the information at issue because release would interfere with a pending criminal investigation and prosecution. Based on this representation, we conclude that section 552.108(a)(1) is applicable in this instance. *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 curium*, 536 S.W.2d 559 (Tex. 1976).

However, 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). Section 552.108(c) refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, the center may generally withhold the submitted information on behalf of the district attorney's office under section 552.108(a)(1) of the Government Code.

In this instance, however, the requestor is a representative of the Enforcement Division of the Texas State 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 (the “DPS”)] criminal history record information [(“CHRI”)] maintained by the [DPS] that relates to a person who:

- (1) is an applicant for or the holder of a license 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) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS] [CHRI] maintained by the [DPS] 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). 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). In this instance, the submitted information contains CHRI. However, the requestor does not indicate, and we are not otherwise able to determine, whether the arrestee in this case is an applicant for or 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 against the arrestee. Accordingly, we must rule in the alternative. If the arrestee is an applicant for or 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 against the arrestee, then the board is authorized to obtain the arrestee’s CHRI in the submitted information pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .125. In that instance, CHRI pertaining to the arrestee must be released to the requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the arrestee in this case is not an applicant for or a holder of a license from the board, has not requested a determination of eligibility for a license from the board, or is not subject to investigation by the board in connection with a complaint or formal charge against the arrestee, then the board is not authorized to obtain the arrestee’s CHRI in the submitted information pursuant to section 411.087(a)(2) of the Government Code, and the center need not release such information to this requestor.

In summary, if the board has a right of access to CHRI pursuant to section 411.087(a)(2) of the Government Code, then with the exception of the basic information and CHRI pertaining to the arrestee, which must be released, the center may withhold the submitted information on behalf of the district attorney’s office under section 552.108(a)(1) of the Government Code. If the board does not have such a right of access to CHRI, then with the exception of the basic information, which must be released, the center may withhold the submitted information on behalf of the district attorney’s office under section 552.108(a)(1) of the Government Code.¹

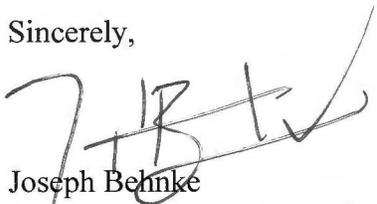
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

¹As our ruling is dispositive, we need not address the remaining argument against disclosure, 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).

[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,

A handwritten signature in black ink, appearing to read "JB" with a checkmark and a flourish.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 593726

Enc. Submitted documents

c: Requestor
(w/o enclosures)