



February 2, 2015

Ms. Sarah Martin
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2015-02043

Dear Ms. Martin:

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# 552263 (Police Dept. Reference No. 17937).

The Arlington Police Department (the "department") received a request from the Texas State Board of Pharmacy (the "board") for a specified incident report involving a named individual the board is investigating. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. 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 state the submitted information pertains to a pending criminal investigation. Based on your representation and our review, 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.

However, we note the requestor is an investigator with the board. Section 411.122(a) of the Government Code provides,

an agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety] criminal history record information [(“CHRI”)] maintained by the [Department of Public Safety] that relates to a person who: (1) is an applicant for a license from the agency; (2) is the holder of a license from the agency; or (3) requests a determination of eligibility for a license from the agency.

Gov't Code § 411.122(a). We note the board is specifically subject to section 411.122 of the Government Code. See *id.* § 411.122(d)(14). 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 to obtain from the [Department of Public Safety CHRI] 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 [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). Thus, under sections 411.122 and 411.087, the requestor may have a right of access to any CHRI about the named individual the board is investigating and whose information is contained in the department’s records. The submitted information contains CHRI about the named individual.

Accordingly, if the individual at issue is an applicant for a license from the board, is a holder of a license from the board, or has requested a determination of eligibility for a license from the board, then the requestor is authorized to obtain the CHRI in the submitted report from

the department pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .122(a). Although you raise section 552.108 of the Government Code for such 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). Thus, if any of these conditions are met, then the department must make available to the requestor CHRI under section 411.087. In that instance, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. However, if the individual at issue does not meet any of the criteria of section 411.122(a)(1)-(3), then the board does not have a special right of access to the CHRI under section 411.087. In that event, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the board has a right of access pursuant to section 411.087(a)(2) of the Government Code, then the department must make available to the requestor CHRI regarding the named individual under section 411.087, but, with the exception of the basic information, may withhold the remaining information under section 552.108(a)(1) of the Government Code. If the board does not have a right of access to the CHRI under section 411.087, then with the exception of basic information, the department may withhold the submitted 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,



Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 552263

Enc. Submitted documents

c: Requestor
(w/o enclosures)