



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 9, 2015

Ms. Sarah R. Martin  
Assistant City Attorney  
Legal Division  
The Arlington Police Department  
P.O. Box 1065, Mail Stop 04-0200  
Arlington, Texas 76004-1065

OR2015-18855

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# 578463 (Police Dept. Ref. No. 22153).

The Arlington Police Department (the "department") received a request for information related to a specified incident involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted incident report pertains to a pending criminal case. Based on your representation, we conclude 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.

Section 552.108, however, 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 basic information, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.

We note, however, the requestor is an investigator with the Texas State Board of Pharmacy (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) 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 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.

Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4337-4338 (Vernon) (to be codified as an amendment to Gov't Code § 411.087(a)). 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 Gov't Code § 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 contained in the department's records. The submitted information contains CHRI about this individual.

In this instance, the individual whose information is at issue is a holder of a license from the board. Thus, the requestor is authorized to obtain the CHRI in the submitted incident report from the department pursuant to section 411.087(a)(2) of the Government Code. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4337-4338 (Vernon) (to be codified as an amendment to Gov't Code § 411.087(a)); *see also* Gov't Code § 411.122(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), 451 at 4 (1986). You also assert this information is subject to common-law privacy. However, we note a specific statutory right of access overcomes the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle). Thus, the department must make CHRI available to the requestor under section 411.087 of the Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

You assert the basic information is subject to the doctrine of common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find no portion of the basic information is highly intimate or embarrassing information and of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must make CHRI available to the requestor under section 411.087 of the Government Code. 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.

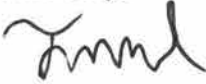
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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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](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,

A handwritten signature in black ink, appearing to read 'Tim Neal', with a stylized, cursive script.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 578463

Enc. Submitted documents

c: Requestor  
(w/o enclosures)