



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 23, 1998

Ms. Sara Fauls
City Attorney
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR98-2829

Dear Ms. Fauls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119903.

The City of Copperas Cove (the "city") received a request for a copy of the report of an arrest for driving while intoxicated and "case narratives, the intoxilyzer report, the original call, complaint, who called and the time of the call." You seek to withhold the requested information under sections 552.103(a)(2) and 552.108 of the Government Code.

We note at the outset that the information you submitted as Exhibit E is a report of the results of an intoxilyzer test. Section 724.018 of the Transportation Code provides that "a person who has given a specimen at the request of a peace officer" may obtain on request "full information concerning the analysis of the specimen." Information specifically made available by statute may not be withheld under any of the exceptions to disclosure in chapter 552 of the Government Code. Since the requestor here is the subject of the test report, you must release the test report to him under section 724.018 of the Transportation Code.

We turn to your claim under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

.....

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

You advise that because of the arrestee's intoxilyzer results, the arrestee was not charged. Based on your representations, we conclude that, apart from the intoxilyzer test results, which, as discussed above, you must release, you may withhold most of the requested information under section 552.108(a)(2).

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). *See also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (information ordinarily found on the front page of an offense report is public). As discussed below, we do not find that you may withhold such "basic information" under the other exceptions you raise to disclosure.

You argue that the requested information may be withheld in its entirety under section 552.103(a) of the Government Code. Section 552.103(a) does not except "basic information" from disclosure absent a particular showing that such release would be detrimental to the governmental body's litigation position. You have not made such a showing here. *See e.g.* Open Records Decision No. 597 (1991).

You also contend that the information you submitted may be withheld in its entirety "pursuant to" *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). That opinion dealt with a claim under former provisions of section 552.108. The current provisions, including those of subsection (c) providing that "basic information" may not be withheld under the section, were adopted in 1997, after *Holmes*. Act of June 1, 1997, 75th Leg., R.S., ch. 1231, 1997 Tex. Sess. Law Serv. 4697 (Vernon). The *Holmes* opinion is thus superseded by the subsequent legislation.

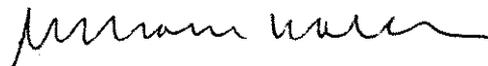
Thus, in our opinion, you must release "basic" or "front page" information from the requested records. We note that the information you submitted as "Exhibit F" is a record of the report of the suspected infraction and the officer(s) dispatched in response. This record constitutes a "radio log" or "radio card" of the kind which this office has long treated "basic" or "front page" information. *See* Open Records Decision No. 394 (1983). This record, along with other basic information in the requested records, must be released.

You argue, "[i]n the alternative," that release of the information you submitted as "Exhibit G" will satisfy the requirement that "basic information" be released. Exhibit G is the first page of the requested arrest report. We have examined Exhibit G. We conclude that its release, along with Exhibit F, the "dispatch record" discussed above, will satisfy the requirement that "basic information" be released.

In summary, you must release Exhibits F and G as "basic information." Exhibit E must be released under section 724.018 of the Transportation Code. You may withhold, under section 552.108(a)(2), the remaining portions of the information you submitted.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 119903

Enclosures: Submitted documents

cc: Ms. Early Lykins
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(w/o enclosures)