

January 8, 1999

Ms. Kristi A. Taylor
Neiman & Barnes, L.L.P.
P.O. Box 777
Lewisville, Texas 75067

OR99-0041



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

— * —

JOHN CORNYN
Attorney General

— * —

P.O. Box 12548
Austin, Texas
78711-2548

(512) 463-2100
www.oag.state.tx.us

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120883.

The Lewisville Police Department received a request for arrest report numbers 98-2555 and 98-2557. You claim that the requested information is excepted from required public disclosure by section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

We note at the outset that included among the submitted information, you have provided 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." Where a statute provides an individual with a special right of access to information, that information may not be withheld from that individual pursuant to the law-enforcement exception. *See* Open Records Decision Nos. 613 (1993), 623 (1994). If the requestor is entitled to the analysis under section 724.018, it must be released to him.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(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; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

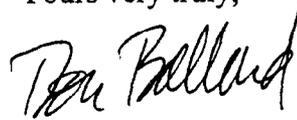
* * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the requested reports concern an active criminal investigation and a case that is pending prosecution. You argue that release of the pending, active reports would interfere with the investigation or prosecution of these cases. We find that you have shown that the release of the requested information 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). Thus, we conclude that the requested information may be withheld under section 552.108(a)(1). We note, however, that information normally found on the front page of an offense report is generally considered public. *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); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 120883

Enclosures: Submitted documents

cc: Mr. Jimmy Teague
1240 North Cowan, # 207
Lewisville, Texas 75057
(w/o enclosures)