

January 21, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
Attorney General

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

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

Ms. Sharon R. Sela
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR99-0149

Dear Ms. Sela:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 121288.

The City of Dallas Police Department (the "department") received a request for an "Accident Report, Arrest Report, Incident Report," concerning an incident that occurred on October 13, 1998. In response to the request, you submit to this office for review a representative sample of the information at issue.¹ You assert that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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). Since the requestor here is the subject of the test report, you must release the test report to her under section 724.018 of the Transportation Code.

We next consider your claim under section 552.108, the “law enforcement” exception, of the Government Code. Section 552.108(a)(1) provides an exception from disclosure for information that is held by a law enforcement agency or prosecutor and that deals with the detection, investigation, or prosecution of crime, when release of such information would interfere with the detection, investigation, or prosecution of crime. 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 id.* §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You explain that “the case is presently pending in County Criminal Court #5,” and submit a letter from the Dallas District Attorney’s Office that states that the requested information relates to a case where the requestor “is accused of driving while intoxicated.” Because you have shown that release of the requested information would interfere with the detection, investigation or prosecution of crime, we conclude that most of the requested information may be withheld under section 552.108(a)(1). *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).

However, we note that “basic information about an arrested person, an arrest, or a crime” is not excepted from required public disclosure. Gov’t Code § 552.108(c). Basic information is 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. *See generally Houston Chronicle*, 536 S.W.2d at 559; Open Records Decision No. 127 (1976). Thus, except for basic information, the requested information is excepted from disclosure under section 552.108(a)(1). Although section 552.108(a)(1) authorizes you to withhold the requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref: ID# 121288

Enclosures: Submitted documents

cc: Ms. Jennifer Lewis
6065 Milton Street, No. 133
Dallas, Texas 75206
(w/o enclosures)