



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2006

Mr. Jeffrey Moore
Attorney at Law
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2006-03650

Dear Mr. Moore:

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# 246148.

The Roanoke Police Department (the "department"), which you represent, received a request for the breathalyser test results for a named individual. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim that the submitted test results are excepted from required disclosure by section 552.101 of the Government Code¹ in conjunction with section 724.018 of the Transportation Code. Section 724.018 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. *See* Open Records Decision Nos. 613 (1993), 623 (1994). Here, however, the requestor is not the subject of the test report. We understand you to argue that because the legislature did not specifically provide access to the test results to anyone other than the person providing the specimen or that person's attorney, the legislature by negative implication intended for the

¹ Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

information to be confidential as to any other requestor. You claim, then, that release of the test results to a third party would be a violation of section 724.018.

In Open Records Decision No. 478 (1987), this office interpreted the predecessor statute, section 3(e) of article 6701l-5 of Vernon's Texas Civil Statutes, as creating a special right of access for the person supplying the specimen; we concluded that the statute did not constitute a grant of confidentiality with regard to other persons. *Id.* at 2-3. *See also* Open Records Decision Nos. 658 (1998) (statutory confidentiality provision must be express), 465 (1987) (confidentiality requirement not to be implied from statutory structure). Therefore, you may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 724.018 of the Transportation Code. As you do not argue the submitted information is otherwise excepted from disclosure, the submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 246148

Enc. Submitted documents

c: Ms. Melissa Stimson
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(w/o enclosures)