



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 7, 2006

Ms. Mary J. Kayser
City Secretary
City of Burleson
141 West Renfro
Burleson, Texas 76028-4261

OR2006-10383

Dear Ms. Kayser:

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# 263486.

The City of Burleson (the "city") received a request for a specified offense report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As a preliminary matter, we note that the submitted information includes the breath test results of the requestor's blood alcohol content. Full information concerning the analysis of the specimen must be made available upon the request of the person who has given a specimen at the request of a peace officer. Transp. Code § 724.018. Thus, the city must release the breath test results that we have marked pursuant to section 724.018 of the Transportation Code.

Turning to the remainder of 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." A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based on this representation and our review, we conclude that

section 552.108(a)(1) is applicable in this instance, and the release of this 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that section 552.108 does not except 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 186-87. Thus, the city must release basic information. *See* Open Records Division No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Additionally, we note that, in this instance, the submitted information contains the arrestee's social security number. While an arrestee's social security number is normally excepted from disclosure under section 552.147 of the Government Code,¹ the requestor in this instance has a special right of access to this information. Gov' t Code § 552.023(b) (governmental body may not deny access to person to whom information relates...on grounds that information is considered confidential by privacy principles). Accordingly, the arrestee's social security number must be released along with all other basic front-page offense and arrest information. The city may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code.

To conclude, the city must release the breath test results that we have marked pursuant to section 724.018 of the Transportation Code. However, with the exception of basic information and the arrestee's social security number, the city may withhold the remaining information under section 552.108 of the Government Code.

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).

¹Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.

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,



Alix K. Cornett
Assistant Attorney General
Open Records Division

AKC/kr1

Ref: ID# 263486

Enc. Submitted documents

c: Mr. Brandon O'Callaghan
436 Hanover Street
Burlson, Texas 76028
(w/o enclosures)