



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 25, 2008

Ms. Janette Ansolabehere
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2008-16205

Dear Ms. Ansolabehere:

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# 332607.

The Texas Department of Public Safety (the "department") received a request for information regarding a specified arrest. You state that some responsive information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes the breath test results of an arrestee'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. Here, the requestor represents the individual who submitted the specimen. Thus, the department must release the breath test results to the requestor.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130 (a)(1), (2). This exception protects personal privacy. However, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code *See id.* § 552.023 (a); Open Records Decision No. 481 at 4 (1987) (privacy theories not

implicated when individual requests information concerning herself). Therefore, the department may not withhold the motor vehicle record information that you have highlighted under section 552.130.

You assert that some of the remaining information is excepted under section 552.108 of the Government Code. 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the records at issue relate to an open criminal investigation. Based upon this representation, we conclude that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co.*, 531 S.W.2d 177 (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code.

To conclude, the department must release the submitted breath test results pursuant to section 724.018 of the Transportation Code. The department may withhold the information at issue under section 552.108 of the Government Code. The remaining information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 332607

Enc. Submitted documents

c: Requestor
(w/o enclosures)