



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2009

Mr. Joseph J. Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2009-03967

Dear Mr. Gorfida:

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# 338749.

The City of Sachse (the "city"), which you represent, received a request for a police report and video recording pertaining to a specified incident. You state some of the information has been released to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that one of the submitted video recordings includes intoxilyzer results. Upon the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018. In this instance, the requestor is the person who gave the breath specimen at the request of a peace officer. Therefore, the submitted intoxilyzer results must be released to the requestor under section 724.018 of the Transportation Code.

You assert portions of the remaining information are excepted from disclosure under section 552.108 of the Government Code. Section 552.108 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 [required public disclosure] if:

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

(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[.]

Gov't Code § 552.108(a)(1)-(2). You appear to raise both of these provisions, which generally are applicable to mutually exclusive types of information. Section 552.108(a)(1) is applicable to information whose release would interfere with a pending criminal investigation or prosecution. Section 552.108(a)(2) is applicable only to information relating to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the information at issue relates to a pending case that is still being investigated. Based on your representations and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to the information at issue. *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).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense and the social security number of the arrestee.¹ *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). You have designated the information that has been released to the requestor as basic information; however, we note this information does not include a detailed description of the offense. Thus, with the exception of basic information, including a detailed description of the offense, the city may withhold the information at issue pursuant to section 552.108(a)(1) of the Government Code.²

¹We note that the city may generally withhold a living person's social security number without seeking a ruling from this office under section 552.147 of the Government Code. Gov't Code § 552.147. In this instance, however, the requestor is the arrestee listed in the submitted police report. Thus, the requestor has a right of access to his own social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

You appear to raise section 552.130 for portions of the remaining information. Section 552.130 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). You have redacted motor vehicle record information from the information you assert has been released to the requestor. We note, however, that section 552.130 does not apply to out-of-state motor vehicle record information. Further, the redacted Texas motor vehicle record information pertains to the requestor and the requestor's vehicle. Because section 552.130 protects privacy interests, this requestor has a right of access to such information under section 552.023 of the Government Code. *See id.* § 552.023. Thus, the city may not withhold any of the remaining information from this requestor pursuant to section 552.130 of the Government Code.

In summary, the submitted intoxilyzer results must be released to the requestor under section 724.018 of the Transportation Code. With the exception of basic information, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. All remaining information must be released to this requestor.³

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/jb

³Should the city receive another request for these same records from a person who would not have a right of access to the requestor's private information, the city should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

Ref: ID# 338749

Enc. Submitted documents

cc: Requestor
(w/o enclosures)