



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 26, 2009

Ms. Marie Feutz
City Secretary
City of Leon Valley
6400 El Verde Road
Leon Valley, Texas 78238-2399

OR2009-07057

Dear Ms. Feutz:

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# 344057.

The City of Leon Valley (the "city") received a request for incident report number 200901360. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes breath test results of an individual'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. The requestor is the spouse of the individual whose blood alcohol content is at issue. Thus, if the requestor is an authorized representative of the individual at issue, the city must release the breath test results we have marked to the requestor. If, however, the requestor is not an authorized representative of the individual at issue, we consider the marked breath test results with the remaining 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." Gov't Code § 552.108. 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have provided a letter from the Bexar County Criminal District Attorney's Office stating that the submitted information relates to a pending criminal prosecution for the purposes of section 552.108(a)(1). *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Based on this representation, we conclude that 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).¹

However, we note that 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88. We note that the information you have marked to withhold under section 552.108 includes the arrestee's race and sex. However, basic information includes, among other things, the arrestee's race and sex. *See id.* at 179-180, 185-87; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Accordingly, the arrestee's race and sex is basic information and thus may not be withheld under section 552.108.

In summary, if the requestor is an authorized representative of the individual at issue, the city must release the breath test results we have marked to the requestor and, with the exception of basic information, may withhold the remaining submitted information under section 552.108(a)(1). If the requestor is not an authorized representative of the individual at issue, then with the exception of basic information, the submitted information may be withheld under section 552.108(a)(1).

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,

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 344057

Enc. Submitted documents

cc: Requestor
(w/o enclosures)