



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2009

Ms. Kathy Allen
Records Supervisor
Burlson Police Department
225 West Renfro
Burlson, Texas 76028-4261

OR2009-16922

Dear Ms. Allen:

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# 362799.

The City of Burlson (the "city") received a request for information related to two specified incidents. 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.

Initially, we note that you have not submitted any information responsive to one of the incidents. Therefore, to the extent the city maintained any information responsive to this incident on the date it received the request, we assume the city has already released such information. If the city has not released any such information, it must do so at this time. *See* Gov't Code § 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply, it must release information as soon as possible).

Next, we note the submitted information includes the results of an analysis of a specimen obtained by a peace officer. Section 724.018 of the Transportation Code provides that "[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. The submitted documents reflect that the specimen was obtained from the requestor. We note the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the city must release the results

of the analysis of the specimen to this requestor pursuant to section 724.018 of the Transportation Code.

Next, we note the submitted information contains the requestor's fingerprints. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential, such as section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government code provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" Gov't Code § 560.002(1)(A). Thus, the requestor has a right of access to the fingerprints under section 560.002(1)(A). Therefore, the city must release the submitted fingerprints, which we have marked under section 560.002 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act).

You claim that the remaining information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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)(1). 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.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a pending criminal prosecution in the Johnson County Attorney's office. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable to the remaining information. *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).

We note, however, that the information at issue contains a "Statutory Warning" and a "Magistrate's Warning." The city provided copies of these forms to the cited individual. You have not explained how releasing this information, which has already been seen by the defendant, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the statutory warning and magistrate's warning may not be withheld under section 552.108.

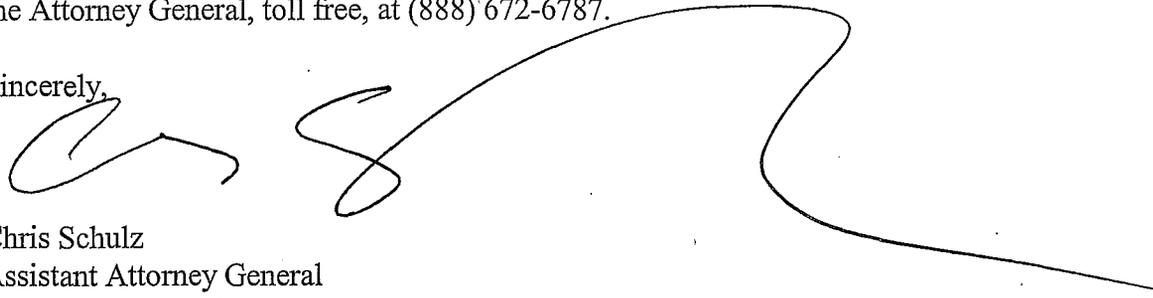
We further note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Except for basic information and the statutory warning and magistrate's warning, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, pursuant to section 724.018 of the Transportation Code, the city must release the breath test results contained in the submitted information to the requestor. The city must release the marked fingerprints under section 560.002 of the Government Code. With the exception of basic information, the statutory warning, and the magistrate's warning, which must all be released, the city may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.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, 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, toll free, at (888) 672-6787.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/dls

¹Because the requestor has a special right of access to the information being released in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 362799

Enc. Submitted documents

c: Requestor
(w/o enclosures)