



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2010

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P. O. Box 60
Abilene, Texas 79604-0060

OR2010-00005

Dear Ms. Messer:

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# 367569.

The City of Abilene (the "city") received a request for a specified incident report involving the requestor. You state some information has been released to the requestor. You claim the submitted 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 the submitted documents contain breath test results of an individual's blood alcohol content. Section 724.018 of the Transportation Code provides, "[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. In this instance, the requestor is the individual who submitted the specimen at the request of a peace officer. You seek to withhold the information at issue under section 552.108. The exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Therefore, the city must release the breath test results to this requestor pursuant to section 724.018 of the Transportation Code.

You seek to withhold the remaining information under section 552.108(a)(1) of the Government Code. Section 552.108 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)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information is part of an active investigation. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *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, the information at issue includes a Statutory Warning. Review of the submitted information indicates the Statutory Warning, which we have marked, has previously been provided to the arrestee. Because a copy of this document has previously been released to the arrestee, we find you have not shown how release of the document will interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Because the remaining information at issue has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is generally applicable to the remaining information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information and the Statutory Warning, the city may withhold the remaining information at issue from disclosure under section 552.108(a)(1).

In summary, the city must release to this requestor the breath test results pursuant to section 724.018 of the Transportation Code. With the exception of the basic information and the Statutory Warning, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

¹We note the Statutory Warning includes the requestor’s driver’s license number, which would ordinarily not be released to the general public under section 552.130. However, the requestor has a right of access to his own driver’s license number pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). The city should again seek a decision if it receives another request for this information from a person other than the requestor or his authorized representative. *See* Gov’t Code § 552.301, .302.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 367569

Enc. Submitted documents

c: Requestor
(w/o enclosures)