



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2010

Mr. Jeffrey L. Moore
Brown & Hofmeister, L.L.P.
For City of Roanoke
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2010-01871

Dear Mr. Moore:

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# 373808.

The Roanoke Police Department (the "department"), which you represent, received a request for specified breath and blood test results related to a particular incident. You state that the department does not have any responsive blood test results.¹ You claim that the submitted breath test results are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The submitted information consists of the breath test results of an arrestee's blood alcohol content. 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 appears to be the spouse of the individual at issue. Thus, if the requestor is an authorized representative of the individual at issue, the department must release the breath test results to the requestor pursuant to section 724.018 of the Transportation Code. To the extent the requestor is not the individual's authorized representative, we will consider your argument against the disclosure of this information.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

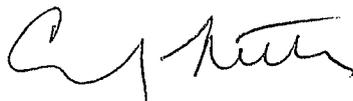
Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(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 Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to an ongoing criminal case. Based on this representation, we conclude that the release of the submitted 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. 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). Thus, if the requestor is not an authorized representative of the individual at issue, the department may withhold the submitted information under section 552.108(a)(1).

In summary, if the requestor is an authorized representative of the individual at issue, the department must release the breath test results to the requestor pursuant to section 724.018 of the Transportation Code. If the requestor is not an authorized representative of the individual at issue, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 373808

Enc. Submitted documents

c: Requestor
(w/o enclosures)