



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2010

Ms. Karin W. Riley
Assistant General Counsel
University of North Texas
1155 Union Circle #310907
Denton, Texas 76203-5017

OR2010-05410

Dear Ms. Riley:

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# 381370 (UNT PIR No. 10-114).

The University of North Texas (the "university") received a request for the arrest and toxicology reports related to a named individual. You state that some responsive information will be provided to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information contains 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. It appears the requestor is a family member of the individual at issue. Thus, the requestor may be acting as this individual's authorized representative. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Therefore, if the requestor is an authorized representative of the individual at issue, the university must release the breath test results to the requestor pursuant to section 724.018 of the Transportation Code. If the requestor is not the individual's authorized representative, we will consider your argument against the disclosure of this information, as well as the remaining submitted information.

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.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You provide documentation stating the submitted information relates to a pending case that has been sent to the District Attorney for prosecution. Based on this representation, we conclude section 552.108(a)(1) is applicable to the portions of the remaining information you have marked. *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, we note, and you acknowledge, 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). Such basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. The university must release basic information even if it does not literally appear on the front page of an offense or arrest report. *See Open Records Decision No. 127 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). We note you have marked nearly the entire narrative portion of the submitted report as information you seek to withhold under section 552.108. However, the remaining portions of the report do not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released as basic information. *See ORD 127*. Accordingly, we determine the university must release a sufficient portion of the narrative section of the submitted report to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. The university generally may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.

You seek to withhold some of the remaining information under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. You have marked driver's license and license plate numbers generally subject to section 552.130. However, as previously noted, the requestor may be acting as this individual's authorized representative. As such, the requestor may have a right of access to the driver's license and license plate numbers belonging to this individual. *See id.*

§ 552.023(a). If the requestor has a right of access under section 552.023 to the marked information, the university must release this information to this requestor. If the requestor does not have a right of access under section 552.023, the university must withhold the information you have marked under section 552.130 of the Government Code.²

In summary, if the requestor is not acting as an authorized representative of the individual at issue, we conclude as follows: (1) except for basic information, including a detailed description of the offense, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code; and (2) the university must withhold the information you have marked under section 552.130 of the Government Code. If the requestor is an authorized representative of the individual at issue, the university (1) must release the breath test results to the requestor pursuant to section 724.018 of the Transportation Code; (2) may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code, except for basic information, which includes a detailed description of the offense; and (3) must release the remaining information.

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

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²We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 381370

Enc. Submitted documents

c: Requestor
(w/o enclosures)