



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2010

Mr. Charles Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-07681

Dear Mr. Weir:

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# 380891 (COSA File No. 2010-5368).

The San Antonio Police Department (the "department") received a request for the breath test results from a specified arrest. 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 the requestor states that he is only seeking the breath test results from the specified arrest. Therefore, the remaining submitted information is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release the non-responsive information in response to this request.

Next, we note the responsive information consists of 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 the commanding officer 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). Therefore, if the requestor is the 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.

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 state that the responsive information relates to a pending criminal investigation and prosecution. Based on your representation, we conclude section 552.108(a)(1) is applicable to the responsive 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). Therefore, if the requestor is not the authorized representative of the individual at issue, the department may withhold the responsive information under section 552.108 of the Government Code.

In summary, if the requestor is the 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 the authorized representative of individual at issue, the department may withhold the breath test results under section 552.108 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)
