



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2010

Mr. Samuel D. Hawk
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-09660

Dear Mr. Hawk:

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# 390289 (DPD ORR No. 2010-4901).

The Dallas Police Department (the "department") received a request for information relating to a specified arrest. You claim that some of 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 information you submitted.¹

We first note that the submitted information includes intoxilyzer results. Section 724.018 of the Transportation Code provides that 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. In this instance, the requestor is the person who gave the breath specimen at the request of a peace officer.

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Therefore, the submitted intoxilyzer results must be released to this requestor pursuant to section 724.018 of the Transportation 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.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked the information that the department seeks to withhold under section 552.108. You state that the marked information is related to a pending criminal case. Based on your representations, we conclude that the department may withhold the marked information under section 552.108(a)(1). *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).

In summary: (1) the intoxilyzer results must be released pursuant to section 724.018 of the Transportation Code; and (2) the information you have marked under section 552.108 of the Government Code may be withheld under section 552.108(a)(1). The rest of the submitted information must be released.²

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

²We note that the remaining information includes the requestor’s social security number and Texas driver’s license information. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to her own social security number. *See generally* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles). The department would ordinarily be required to withhold the requestor’s driver’s license information under section 552.130 of the Government Code, but she also has a right of access to that information under section 552.023. Should the department receive another request for these same records from a person who would not have a right of access to this requestor’s driver’s license information, the department should resubmit these records and request another decision. *See* Gov’t Code §§ 552.301(a), .302.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/tp

Ref: ID# 390289

Enc: Submitted information

c: Requestor
(w/o enclosures)