



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2010

Ms. Sheri Dye  
Assistant Criminal District Attorney  
Bexar County  
300 Dolorosa, Suite 500  
San Antonio, Texas 78205-3030

OR2010-11842

Dear Ms. Dye:

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# 389439.

The Bexar County District Attorney's Office (the "district attorney") received a request for all documents relating to a specified cause number. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. In this instance, the requestor is an attorney who represents the individual whose test results are at issue. Although you seek to withhold the results of the analysis of the breath specimen under sections 552.103, 552.108, and 552.111 of the Government Code, as a general rule the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the submitted results of the analysis of the breath specimen must be released to this requestor pursuant to section 724.018 of the Transportation Code.

Next, we note some of the some of the remaining information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...  
(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). The remaining information contains a completed case report subject to section 552.022(a)(1) and a warning signed by a magistrate subject to section 552.022(a)(17). The district attorney may only withhold the information subject to section 552.022(a)(1) if it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. The district attorney may only withhold the information subject to section 552.022(a)(17) if it is confidential under other law. Although you seek to withhold the information subject to section 552.022 under sections 552.103, 552.108, 552.111 of the Government Code, these sections are discretionary exceptions that protect a governmental body's interest and are, therefore, not "other law" for purposes of section 552.022. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108), 552 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Therefore the district attorney may not withhold the magistrate's warning under section 552.103, section 552.108, or section 552.111 of the Government Code. As you raise no further exception to the disclosure of the magistrate's warning, it must be released. Additionally, the district attorney may not withhold the information subject to section 552.022(a)(1) under section 552.103 or section 552.111 of the Government Code. However, the attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure . . . are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." See TEX. R. CIV. P. 2. Thus, because the submitted information relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to this information and it may not be withheld on that basis. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address your

arguments under this exception for the remaining information. We will also consider your arguments under sections 552.103 and 552.111 for the remaining information not subject to section 552.022(a)(1).

Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993, orig. proceeding), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. You state that the present request is for the entire case file for the specified cause number. In addition, you assert that release of the remaining information would reveal the mental processes, conclusions, and legal theories of the attorneys involved in the prosecution. Based on your representations, we conclude that section 552.108(a)(4) is applicable to the remaining information.

We note, however, 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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the district attorney may withhold the remaining information at issue under section 552.108(a)(4) of the Government Code.

In summary, the district attorney must release the breath test results to the requestor pursuant to section 724.018 of the Transportation Code. With the exception of the magistrate's warning and basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.<sup>1</sup>

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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 389439

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.