



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2010

Mr. Jose Hernandez
Records Clerk
Edinburg Police Department
1702 South Clossner Boulevard
Edinburg, Texas 78539

OR2010-12388

Dear Mr. Hernandez:

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# 395060 (Reference No. 11753).

The Edinburg Police Department (the "department") received a request for a specified report, "including [the] breath test." You indicate that basic information either has been or will be released. *See* Gov't Code § 552.108(c); Open Records Decision No. 127 at 3-4 (1976). You claim that the rest 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.

We first note that the information at issue includes the results of an analysis of a breath specimen. 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. Although you seek to withhold the results of the analysis of the breath specimen under section 552.108 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 address your claim for the remaining information at issue under section 552.108 of the Government Code. Section 552.108(a)(1) 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,

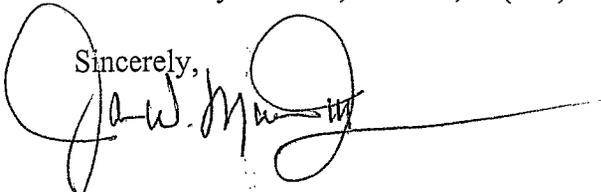
investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked the information the department seeks to withhold under section 552.108. You state that the marked information is related to a pending criminal case. Based on your representation and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable in this instance. *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, except for the results of the analysis of the breath specimen, the department may withhold the marked information under section 552.108(a)(1).

In summary: (1) the results of the analysis of the breath specimen must be released to this requestor pursuant to section 724.018 of the Transportation Code; and (2) the rest of the information at issue may be withheld 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,



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

JWM/em

Ref: ID# 395060

Enc: Submitted documents

c: Requestor
(w/o enclosures)