



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2010

Mr. Adam C. Falco
Senior Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2010-14266

Dear Mr. Falco:

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# 399042.

The College Station Police Department (the "department") received a request for information pertaining to a specified incident. You state that some responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information includes the results of an analysis of a blood specimen. Section 724.018 of the Transportation Code provides that "[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. We note that 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, if the requestor is an attorney for the person who gave the specimen at the request of a peace officer, then the results of the analysis of the specimen must be released to the requestor pursuant to section 724.018 of the Transportation Code. If the requestor is not an attorney for the person who gave the specimen, then the department must dispose of the results of the analysis of the specimen in accordance with the rest of this decision.

Next, we address your claim under section 552.108 of the Government Code for the remaining information at issue. 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).

We note that the remaining information includes a statutory warning. Because a copy of that document was provided to the person who is the subject of the warning, we find that the release of the statutory warning will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the statutory warning, which we have marked, may not be withheld under section 552.108.

You state that the remaining information at issue relates to an open and pending criminal prosecution. Based upon your representation and our review, we conclude that the release of the remaining information at issue would interfere with the detection, investigation, or prosecution of crime. *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).

We also note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The department must release basic offense and arrest information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Except for basic information and the statutory warning, the department may withhold the remaining information under section 552.108(a)(1).

You also claim the statutory warning is excepted under section 552.103 of the Government Code. Section 552.103 provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. As discussed above, the statutory warning was provided to the arrestee; thus, the statutory warning was seen by the opposing party. Therefore, the statutory warning may not be withheld under section 552.103 of the Government Code.¹

Finally, we note that the statutory warning contains a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state.² *See* Gov't Code § 552.130(a)(1). Because section 552.130 protects personal privacy, if the requestor is an attorney for the individual whose driver's license information is at issue, the requestor has a special right of access to his client's Texas driver's license number under section 552.023 of the Government Code and the department may not withhold it from him on that basis. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). However, if the requestor does not represent the individual whose information is at issue, the department must withhold the Texas driver's license number we have marked under section 552.130.³

In summary: If the requestor is an attorney for the arrestee, (1) the results of the analysis of the blood specimen must be released pursuant to section 724.018 of the Transportation Code; and (2) the statutory warning must be released. If the requestor is not an attorney for the arrestee, except for the marked Texas driver's license number, which the department must withhold under section 552.130 of the Government Code, the statutory warning must be released. In either case, the remaining information may be withheld under

¹We also note that section 552.103 does not generally except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

²The Office of the Attorney General will raise a mandatory exception such as section 552.130 on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).⁴

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

CN/dls

Ref: ID# 399042

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note that basic information includes an arrested person's social security number. 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. However, if the requestor is an attorney for the individual whose social security number is at issue, the requestor has a right to his client's 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).