



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 24, 2011

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
Killeen Police Department  
402 North Second Street  
Killeen, Texas 76541-5298

OR2011-01167

Dear Ms. Mapes:

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# 411048 (KPD ID No. W004732).

The Killeen Police Department (the "department") received a request for information relating to a specified case number. You claim 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 note the submitted information 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 specimen at the request of a peace officer. Although you seek to withhold the results of the analysis of the 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 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 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 state the remaining information at issue is related to a pending prosecution. Based on your representations, we conclude section 552.108(a)(1) is generally 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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

We also note 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, the statutory warning, and the notice of suspension, the department may withhold the remaining 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; (2) the department may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code, except for the statutory warning, the notice of suspension, and the basic information that must be released under section 552.108(c).<sup>1</sup>

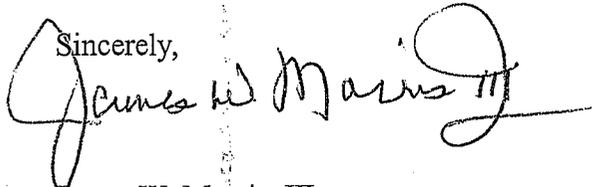
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<sup>1</sup>We note the statutory warning and the notice of suspension contain the requestor’s Texas driver’s license number, which the department would ordinarily be required to withhold under section 552.130 of the Government Code. Because section 552.130 protects personal privacy, the requestor has a special right of access to his Texas driver’s license number under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). We also note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas driver’s license number under section 552.130. Thus, should the department receive another request for these same records from a requestor other than one with a right of access under section 552.023, the department is authorized to withhold this requestor’s Texas driver’s license number under section 552.130 without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal flourish at the end.

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

JWM/em

Ref: ID# 411048

Enc: Submitted information

c: Requestor  
(w/o enclosures)