



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 1, 2011

Mr. Craig A. Magnuson  
Attorney  
City of Mansfield  
1305 East Broad Street  
Mansfield, Texas 76063

OR2011-10993

Dear Mr. Magnuson:

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# 430267 (No. 11-0639).

The Mansfield Police Department (the "department") received a request for information relating to a specified arrest. 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 first note some of the information you seek to withhold was created after the department received the present request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information.<sup>1</sup> Thus, the information that did not exist when the department received the present request is not responsive to the request. This decision does not address the public availability of that information.

We next note the submitted information includes the results of an analysis of a breath specimen. Section 724.018 of the Transportation Code provides that on the request of the

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<sup>1</sup>See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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. 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 other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). In this instance, the requestor is the person who gave the breath specimen at the request of a peace officer. 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 for the rest of the responsive information. 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 is related to a pending criminal case. Based on your representations, we conclude 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) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

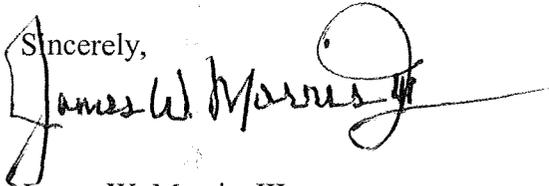
We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The department must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

In summary, the department (1) must release the results of the analysis of the breath specimen pursuant to section 724.018 of the Transportation Code and (2) may withhold the rest of the responsive information under section 552.108(a)(1) of the Government Code, except for the basic offense and arrest information that must be released under section 552.108(c).

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, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, prominent initial "J".

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

JWM/em

Ref: ID# 430267

Enc: Submitted documents

c: Requestor  
(w/o enclosures)