



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2011

Mr. David K. Walker  
County Attorney  
Montgomery County  
207 West Phillips, Suite 100  
Conroe, Texas 77301

OR2011-11415

Dear Mr. Walker:

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# 426289 (Montgomery ORR# 2011-2347).

The Montgomery County Sheriff's Department (the "sheriff") received a request for information regarding a specified incident and the procedures for conducting breathalyzer tests. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes intoxilyzer results. Section 724.018 of the Transportation Code provides that on 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. Here, the requestor is the individual who submitted the specimen at the request of a peace officer. Thus, the sheriff must release the intoxilyzer results to the requestor.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

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<sup>1</sup>Although you also raise section 552.101 of the Government Code, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. *See* Gov't Code §§ 552.301, .302.

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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert, and provide an affidavit from the Montgomery County District Attorney supporting the assertion, the information you wish to withhold relates to a pending criminal prosecution, and release of the information would interfere with that prosecution. *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). Based on these representations and our review, we conclude section 552.108(a)(1) is applicable.

As you acknowledge, 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*. 531 S.W.2d at 186–87. This information includes, but is not limited to: the details of the arrest; the name, social security number, and physical condition of the arrested person; and a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include Texas motor vehicle record information subject to section 552.130 of the Government Code. Thus, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</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.

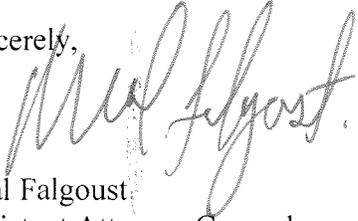
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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<sup>2</sup>Although section 552.147 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, we note this exception is designed to protect privacy interests. *See* Gov’t Code § 552.147(b). Therefore, the sheriff may not withhold the requestor’s social security number from him on the basis of section 552.147. *See id.* § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests). However, if the sheriff receives another request for this same information from a different requestor, it may withhold the requestor’s social security number under section 552.147(b) of the Government Code without requesting a decision from this office.

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 cursive script, appearing to read "Neal Falgoust".

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/tf

Ref: ID# 426289

Enc. Submitted documents

c: Requestor  
(w/o enclosures)