



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2011

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2011-12556

Dear Ms. Monteros:

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# 432661 (El Paso CA-OP-11-308).

The El Paso County Sheriff's Office (the "sheriff") received a request for a specified case report. 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 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. Although you seek to withhold the results of the analysis of the breath specimen under sections 552.103 and 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 sheriff must release the submitted results of the analysis of the breath specimen 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 submitted 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 inform us, and have provided a letter from an assistant district attorney for the 34th Judicial District stating, release of the remaining information would interfere with a pending criminal prosecution. Based on your representations and the assistant district attorney’s letter, we conclude section 552.108(a)(1) is applicable to the remaining information. *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).

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). 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 sheriff 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*). The sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, the sheriff (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 submitted information under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).²

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.

¹ As our ruling is dispositive, we need not consider your remaining argument except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

² We note basic information includes the 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. The requestor has a right, however, to his own 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).

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,

A handwritten signature in black ink that reads "Sean Opperman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/sdk

Ref: ID# 432661

Enc. Submitted documents

c: Requestor
(w/o enclosures)