



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2011

Ms. Yushan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-13252

Dear Ms. Chang:

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# 429844 (GC No. 18724).

The City of Houston (the "city") received a request for information pertaining to an incident on a specified date involving the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note you have redacted police officer employee numbers from the submitted information. However, you do not assert, nor does our review of the records indicate, you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Next, we note the submitted information includes the result 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 result 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 result 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 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). We note the submitted information includes a citation. Because a copy of the citation has been provided to the individual cited, we find that release of the citation will not interfere with the detection, investigation, or prosecution of a crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the city may not withhold the citation we have marked under section 552.108(a)(1). You state release of the remaining information would interfere with an open and active criminal prosecution. 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the citation and basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

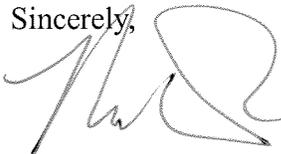
In summary, the city (1) must release the result of the analysis of the breath specimen to this requestor pursuant to section 724.018 of the Transportation Code and (2) may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code, except for the citation and basic information that must be released.¹

¹We note the information being released contains information to which the requestor has a right of access. *See* Gov’t Code § 552.023(a) (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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Therefore, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 429844

Enc. Submitted documents

cc: Requestor
(w/o enclosures)