



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2011

Mr. Robert Almonte
Assistant City Attorney
City of El Paso
2 Civic Center Plaza 9th Floor
El Paso, Texas 79901

OR2011-16615

Dear Mr. Almonte:

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# 441335.

The El Paso Police Department (the "department") received a request for information related to a specified case number. You claim most of 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 blood specimen. Section 724.018 of the Transportation Code provides that on 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 the person or the person's attorney. 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 specimen at the request of a peace officer. Therefore, the submitted results of the analysis of the blood specimen, which we have marked, 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 remaining information at issue. 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 indicate, and have provided a letter from an assistant district attorney for the Thirty-fourth Judicial District stating, release of the remaining information would interfere with a pending criminal prosecution. Based on your representation and the assistant district attorney’s letter, we conclude section 552.108(a)(1) is generally 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).

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

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 offense and arrest 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*). The department must release basic 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. 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 blood specimen pursuant to section 724.018 of the Transportation Code; (2) must release the statutory warning; and (3) may withhold the remaining information at issue under

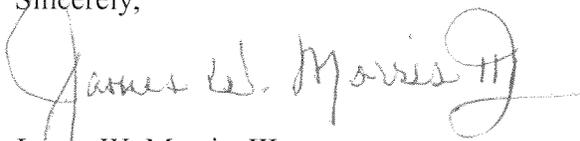
¹We note the statutory warning includes the requestor’s driver’s license number, which the department would be required to withhold from the general public under section 552.130(a)(1) of the Government Code. Because section 552.130 protects personal privacy, the requestor has a right of access to his own driver’s license number under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (“A person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov’t Code § 552.130(c)). Thus, if the department receives another request for this same information from a person who would not have a right of access to the present requestor’s private information, section 552.130(c) authorizes the department to redact his driver’s license number.

section 552.108(a)(1) of the Government Code, except for basic information 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, 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 cursive script that reads "James W. Morris III". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

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

JWM/em

Ref: ID# 441335

Enc: Submitted documents

c: Requestor
(w/o enclosures)