



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 16, 2012

Mr. R. Brooks Moore  
Managing Counsel, Governance  
The Texas A&M University System  
301 Tarrow Street, 6th Floor  
College Station, Texas 77840-7896

OR2012-02470

Dear Mr. Moore:

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# 449454.

The Texas A&M Police Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note that the information you seek to withhold includes intoxilyzer results. 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 that person or the person's attorney. Transp. Code § 724.018. In this instance, the requestor is an attorney who may be representing the person who provided the breath specimen at the request of a peace officer. Therefore, if the requestor is the authorized representative of the individual at issue, the submitted intoxilyzer results must be released to this requestor pursuant to section 724.018 of the Transportation Code. Although you also raise sections 552.103 and 552.108 for this information, a statutory right of access prevails over general exceptions in the Act. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information).

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 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 release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the requested information pertains to a pending criminal investigation. Based on your representation and our review of the information, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the remaining information you have marked under section 552.108(a)(1).<sup>1</sup>

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license, title, or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)-(2). Therefore, the department must generally withhold the information you have marked, and the additional information we have marked, under section 552.130.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Therefore, the department may generally withhold the social security numbers you have marked under section 552.147(a).<sup>2</sup>

However, we note section 552.130 and section 552.147 protect personal privacy. The requestor may be an attorney representing the individual at issue. Thus, if the requestor is an authorized representative of the individual at issue, the requestor has a right of access to his client’s own information under section 552.023 of the Government Code. *See id.* § 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). Therefore, if the requestor is the authorized representative of the individual at issue, then the

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<sup>1</sup>Because our ruling is dispositive, we do not address your remaining argument against disclosure.

<sup>2</sup>We note [you have marked a social security number in the remaining information.] [the information to be released contains a 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 an attorney general decision under the Act. *See Gov’t Code* § 552.147(b).

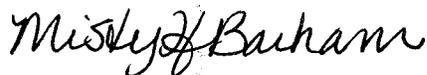
department may not withhold from this requestor information under section 552.130 or 552.147 that pertains to that individual.

In summary, the department may withhold the information you have marked under section 552.108(a)(1) and 552.147 of the Government Code and must withhold the information you marked under section 552.130 of the Government Code. However, if the requestor is the authorized representative of the individual at issue, the department must release to this requestor the information we have marked under section 552.101 of the Government Code in conjunction with section 724.018 of the Transportation Code and information marked under sections 552.130 and 552.147 that pertains to the individual. In either case, the remaining information must be released.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/agn

Ref: ID # 449454

Enc. Submitted documents

c: Requestor  
(w/o enclosures)