



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2012

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2012-08327

Dear Ms. Middlebrooks:

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# 459102 (PIR: 2012-04853).

The Dallas Police Department (the "department") received a request for information related to service number 90187-Z. You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>We note the submitted information contains the arrestee'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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b). However, the requestor may be the arrestee's authorized representative. Because section 552.147 protects personal privacy, the requestor may have a right of access to this information under section 552.023 of the Government Code. *See generally id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the requestor is the authorized representative of the arrestee, then the arrestee's social security number must be released to the requestor. If the requestor is not the arrestee's authorized representative, this social security number may be withheld under section 552.147(b) of the Government Code.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state the department received the request for information on April 24, 2012. Accordingly, the department's ten-business-day deadline was May 8, 2012. However, you did not submit your request for a decision until May 9, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department failed to comply with the requirements of section 552.301.

A governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

You claim an exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception that may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 52.108 subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). The Dallas County District Attorney's Office (the "district attorney's office") asserts a law enforcement interest in the information at issue. Therefore, we will determine whether the department may withhold the submitted information on behalf of the district attorney's office under section 552.108. Further, your remaining claim under section 552.130 of the Government Code can provide a compelling reason for non-disclosure. Accordingly, we will address your claims for the submitted information.

Next, we note the submitted information contains the breath test results of an individual's blood alcohol content. 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. Although you assert this information is excepted

from disclosure under section 552.108 of the Government Code, the exceptions to disclosure in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). The requestor appears to represent the individual whose blood alcohol content is at issue. Thus, if the requestor is an authorized representative of the individual whose information is at issue, then the department must release the submitted blood test results to the requestor pursuant to section 724.018 of the Transportation Code. If the requestor is not the named individual's authorized representative, we will consider your arguments against the disclosure of this information, as well as the remaining submitted documents.

Section 552.108 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 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 state the information you have marked relates to a pending criminal prosecution and that the district attorney’s office objects to its release at this time because release of the information at issue would interfere with the prosecution of the case. Based on the objections made by the district attorney’s office and our review, we find the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *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); *see also* Open Records Decision No. 474 at 4-5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct). Therefore, the department may withhold the information you have marked under section 552.108(a)(1) on behalf of the district attorney’s office, subject to the requestor’s possible right of access to a portion of it under section 724.018 of the Transportation Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Accordingly, the department must generally withhold the motor vehicle record information you have marked in the submitted documents under section 552.130 of the Government Code. However, section 552.130 protects personal privacy. As noted above, the requestor may be the authorized representative of the individual whose privacy interest is at issue. In that event, the requestor has a right of access under section 552.023 of the Government Code to the motor vehicle record information and the department may not withhold it from him under section 552.130. *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); Open Records Decision

No. 481 at 4 (1987). If the requestor is not the person's authorized representative, then the department must withhold the marked motor vehicle record information in the remaining records under section 552.130 of the Government Code.

To conclude, the department must release the submitted blood test results pursuant to section 724.018 of the Transportation Code if the requestor is an authorized representative of the individual whose information is at issue. The department may withhold the marked information under section 552.108(a)(1) of the Government Code, subject to the requestor's possible right of access to a portion of it under section 724.018 of the Transportation Code. The department must withhold the information you have marked under section 552.130 of the Government Code, unless the requestor has a right of access to this information pursuant to section 552.023 of the Government Code, in which case, it must be released to the requestor. The department must release the remaining information.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 459102

Enc. Submitted documents

c: Requestor  
(w/o enclosures)