



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2012

Mr. David H. Guerra  
King, Guerra, Davis & Garcia  
P.O. Box 1025  
Mission, Texas 78573

OR2012-08883

Dear Mr. Guerra:

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# 455898.

The Mission Police Department (the "department"), which you represent, received a request for a specified police report, including photographs and video. You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes the results of an analysis of a breath 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 that person or the person's attorney. Transp. Code § 724.018. As a general rule, the exceptions to disclosure found 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). In this instance, the requestor's client is the person who provided the breath specimen at the request of a peace officer. Therefore, the submitted breath test results 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. 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 state the information at issue is related to a case in which criminal charges are pending. Based on your representations, we conclude section 552.108(a)(1) is generally applicable to the remaining information you have marked in the submitted report, as well as the submitted video. *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, however, 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 offense and arrest information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *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*). We note you have marked the entire narrative portion of the submitted report as information you seek to withhold under section 552.108. However, the remaining information does not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See* ORD 127. Thus, with the exception of a detailed description of the offense, the department may withhold the remaining information you have marked in the submitted report, as well as the submitted video, under section 552.108(a)(1) of the Government Code.

You have highlighted a driver’s license number in the remaining information under section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator’s license or driver’s license is excepted from public release. *See* Gov’t Code § 552.130(a)(1). However, we note section 552.130 protects personal privacy. In this instance, the requestor is an attorney representing the individual whose information is at issue. Therefore, the requestor has a right of access to her client’s driver’s license number, which you have highlighted in yellow, under section 552.023 of the Government Code, and the department may not withhold that information under section 552.130 of the Government Code. *See id.* § 552.023 (person or person’s authorized representative has special right of access, beyond 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 requests information concerning himself).

In summary, the department must release the breath test results pursuant to section 724.018 of the Transportation Code. With the exception of a detailed description of the offense, the department may withhold the remaining information you have marked in the submitted

report, as well as the submitted video, under section 552.108 of the Government Code. The remaining information must be released.<sup>1</sup>

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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/ag

Ref: ID# 455898

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the information being released contains a driver's license number to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023; ORD 481 at 4 (1987). 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* Gov't Code § 552.130(c). Therefore, if the department receives another request for the same information from a person who would not have a right of access to this information, section 552.130(c) authorizes the department to redact driver's license information without requesting another ruling.