



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2012

Ms. Rebecca Brewer
For City of Melissa
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2012-09345

Dear Ms. Brewer:

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# 460801.

The City of Melissa (the "city"), which you represent, received a request for information pertaining to a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which provides as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Section 58.007(c) does not apply to information that relates to a juvenile as a complainant, victim, witness, or other involved party, and not as a suspect or offender. You argue the submitted information is subject to section 58.007(c) of the Family Code. Upon review, we find you have not demonstrated how the submitted information, which involves an eighteen-year-old arrestee, involves juvenile conduct for purposes of section 58.007 of the Family Code. Accordingly, the city may not withhold the submitted information under section 552.101 of the Government Code on that basis.

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 is the individual whose information is at issue. Thus, the city must release the submitted breath test results to the requestor pursuant to section 724.018 of the Transportation Code.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977)*. You state the requested information relates to a pending criminal investigation. Based on this representation, we conclude the release of the submitted information 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)*.

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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87. Thus, with the exception of the basic front-page offense and arrest information, the city may withhold the submitted information under section 552.108(a)(1).

To conclude, the city must release the submitted breath results pursuant to section 724.018 of the Transportation Code. ~~With the exception of basic information, the city may withhold~~ the remaining information under section 552.108(a)(1) of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 460801

Enc. Submitted documents

cc: Requestor
(w/o enclosures)