



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2012

Ms. Linda M. Champion  
Assistant City Attorney  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR2012-17270

Dear Ms. Champion:

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# 472229.

The City of Victoria (the "city") received a request for information pertaining to the arrest of a named individual. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes the named individual's intoxilyzer results. Section 724.018 of the Transportation Code provides, 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. If the requestor is acting as the authorized representative of the named individual, the requestor has a right of access to that information. See Gov't Code § 552.023(a) (person's authorized representative has a special right of access to information about that person that is excepted from disclosure under laws intended to protect privacy interests). Although you raise section 552.108 of the Government Code for this information, the general 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).

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with the attorney work-product privilege for the submitted information, this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Section 552.111 of the Government Code is the proper exception to raise when claiming the work-product privilege in this instance.

Therefore, if the requestor is acting as the named individual's authorized representative, the city must release the intoxilyzer results to the requestor under section 724.018 of the Transportation Code. If the requestor does not have a right of access to the intoxilyzer results, we will consider your arguments against disclosure of this information along with the remaining submitted information.

Section 552.108(a)(1) excepts from disclosure information 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). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the submitted information includes a statutory warning and a notice of suspension. Because copies of these documents have been provided to the offender, we find their release will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the city may not withhold the statutory warning or notice of suspension, which we have marked, under section 552.108(a)(1). You state the remaining information relates to a pending criminal investigation. Based on this representation, we conclude the release of this 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 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic front-page offense and arrest information, the marked statutory warning, and the marked notice of suspension, the city may withhold the remaining information under section 552.108(a)(1).<sup>2</sup>

We note that the statutory warning and notice of suspension contain a driver's license number that is subject to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). However we note the requestor may be an authorized representative of the individual to whom the marked information pertains. Because section 552.130 protects personal privacy, the requestor has a right of access to the

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

individual's driver's license number if she is the individual's authorized representative. *See id.* § 552.023(a). Thus, if the requestor is the individual's authorized representative, his driver's license number may not be withheld under section 552.130 and must be released. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is not the individual's authorized representative, the city must withhold the marked driver's license number under section 552.130 of the Government Code.

In summary, to the extent the requestor has a right of access to the intoxilyzer results, the city must provide the requestor with the results under section 724.018 of the Transportation Code. With the exception of the basic front-page offense and arrest information, the marked statutory warning, and the marked notice of suspension, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. If the requestor is not the named individual's authorized representative, the city must withhold the driver's license number we have marked in the statutory warning and notice of suspension under section 552.130 of the Government Code. The city 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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

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SN/bhf

Ref: ID# 472229

Enc. Submitted documents

c: Requestor  
(w/o enclosures)