



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2013

Mr. John R. Batoon
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-09336

Dear Mr. Batoon:

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# 493886.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the information you seek to withhold 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 is the person who provided the breath specimen at the request of a peace officer. Therefore, the submitted results of the analysis of the breath specimen must be released to this requestor pursuant to section 724.018 of the Transportation Code.

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

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). You state the remaining information relates to a pending criminal investigation and prosecution. Based on this representation, we conclude that 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. 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). Thus, section 552.108(a)(1) is applicable to the remaining information.

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 Houston Chronicle*, 531 S.W.2d at 186-88. The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. *See Open Records Decision No. 127* at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining submitted information under section 552.108(a)(1).

In summary, the submitted results of the analysis of the breath specimen must be released to this requestor pursuant to section 724.018 of the Transportation Code. With the exception of basic information, which must be released, the department may withhold the remaining submitted 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ac

Ref: ID# 493886

Enc. Submitted documents

c: Requestor
(w/o enclosures)