



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 28, 2013

Mr. Mark D. Kennedy  
Assistant District Attorney  
Hays County District Attorney's Office  
712 South Stagecoach, Suite 2057  
San Marcos, Texas 78666

OR2013-11116

Dear Mr. Kennedy:

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# 495471.

The Hays County District Attorney's Office (the "district attorney's office") received a request for information regarding the requestor's arrest on a specified date. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.022(a)(17). The submitted information contains a court-filed document that is subject to subsection 552.022(a)(17) and must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to subsection 552.022(a)(17) under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See 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 § 552.108 subject to waiver).* Therefore, the marked court-filed document may not be withheld under section 552.108 of the Government Code. As you claim no other exception to the disclosure of the marked court-filed document, it must be released.

We next note the remaining information contains portable breath test results of an individual's blood alcohol content. Section 724.018 of the Transportation Code provides, "[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. In this instance, the requestor is the individual who submitted the specimen at the request of a peace officer. You seek to withhold the information at issue under section 552.108 of the Government Code. However, we note a provision providing a specific right of access to information prevails over the general exceptions to disclosure found in the Act. *See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act).* Thus, the district attorney's office may not withhold the results at issue, which we have marked, under section 552.108 of the Government Code. Therefore, the district attorney's office must release the marked portable breath test results to this requestor pursuant to section 724.018 of the Transportation Code.

We understand you to assert the submitted information is excepted under section 552.108 as interpreted by *Holmes v. Morales*. *See* 924 S.W.2d 920 (Tex. 1996). In *Holmes*, the Texas Supreme Court held the plain language of section 552.108 did not require a governmental body to show release of the information would unduly interfere with law enforcement. *Id.* at 925. The *Holmes* case further held "section 552.108's plain language makes no distinction between a prosecutor's 'open' and 'closed' criminal litigation files" and concluded the Harris County District Attorney may withhold his closed criminal litigation files under that exception. *Id.* Subsequent to the interpretation of section 552.108 in *Holmes*, the Seventy-fifth Legislature amended section 552.108 extensively. *See* Act of June 1, 1997, 75th Leg., R.S., ch. 1231, § 1, 1997 Tex. Gen. Laws 4697. As amended, section 552.108 now expressly requires a governmental body to explain, among other things, how release of the information would interfere with law enforcement. Accordingly, the court's ruling in *Holmes*, which construed former section 552.108, is superseded by the amended section, which now reads, in pertinent part, as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) 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 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 provide an affidavit stating the submitted information relates to a pending criminal prosecution. Based on this representation, we conclude release of the remaining 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). 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the district attorney's office must release the court-filed document we have marked under section 552.022(a)(17) of the Government Code. The district attorney's office must also release the submitted portable breath test results, which we have marked, pursuant to section 724.018 of the Transportation Code. With the exception of basic information, which must also be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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<sup>2</sup>We note the basic information includes 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 a decision from this office under the Act. Gov't Code § 552.147. However, the requestor has a right of access to his own social security number pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).

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](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,

A handwritten signature in black ink that reads "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 495471

Enc. Submitted documents

c: Requestor  
(w/o enclosures)