



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2014

Mr. John K. McKinney, Jr.
Assistant County Attorney
Montgomery County
501 North Thompson, Suite 102
Conroe, Texas 77301

OR2014-07051

Dear Mr. McKinney:

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# 521177 (ORR #2014-0753).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted documents contain the results of a breath specimen. 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. A provision providing a specific right of access prevails over the exceptions to disclosure found in the Act. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Thus, the sheriff's office may not withhold the information at issue under section 552.108 of the Government Code. Therefore, the sheriff's office must release the submitted breath test results, which we have marked, to this requestor pursuant to section 724.018 of the Transportation Code.

¹Although you raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

Next, 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, and have provided an affidavit stating, release of the remaining information will interfere with a pending criminal prosecution. We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The sheriff’s office provided copies of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code § 552.108(a)(1)*. Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108. However, we conclude release of the remaining information will 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). Accordingly, 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* 531 S.W.2d at 186; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information and the DIC-24 and DIC-25 forms, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the breath test results we marked must be released pursuant to section 724.018 of the Transportation Code. Except for the DIC-24 and DIC-25 forms and basic information, the sheriff’s office may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.²

²We note the information being released includes the requestor’s driver’s license information to which the requestor has a right of access. *See Gov’t Code § 552.023(a)*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov’t Code § 552.130(c)*. If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Accordingly, if the sheriff’s office receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the sheriff’s office to redact the requestor’s driver’s license information without the necessity of requesting a decision under the Act.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/eb

Ref: ID# 521177

Enc. Submitted documents

c: Requestor
(w/o enclosures)