



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2014

Ms. Eileen M. Hayman
Assistant City Attorney for City of Breckenridge
Messer, Rockefeller & Fort, PLLC
4400 Buffalo Gap Road, Suite 2800
Abilene, Texas 79606

OR2014-13432

Dear Ms. Hayman:

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# 532094.

The City of Breckenridge (the "city"), which you represent, received a request for information regarding the requestor's arrest and specified policies of the city's police department. You state the city is releasing some information to the requestor. You also state the city has redacted social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a court-filed document, which is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record"

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See Gov't Code § 552.147(b).*

unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(17). Although the city raises sections 552.103 and 552.108 of the Government Code for the submitted court-filed document, those sections are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). As such, sections 552.103 and 552.108 do not make information confidential for the purposes of section 552.022. Therefore, the submitted court-filed document may not be withheld under section 552.103 or section 552.108. As no further exceptions have been raised for this information, the city must release the submitted court-filed document, which we have marked, to the requestor.

Next, we note the remaining information includes the results of an analysis of a breath specimen. Section 724.018 of the Transportation Code provides that “[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. As a general rule, the general 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 city must release the submitted results of the analysis of the breath specimen to this 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[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue 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, 710 (Tex. 1977). The city states the remaining information relates to a pending criminal prosecution. Based on this representation, we conclude the 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, 186-87 (Tex. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include motor vehicle record

information subject to section 552.130 of the Government Code. Thus, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

We note you have redacted the requestor's driver's license information from the court-filed document pursuant to section 552.130(c) of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). However, the requestor has a right of access to his own driver's license information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the city may not withhold the requestor's driver's license information from him under section 552.130 of the Government Code.

In summary, the city must release the court-filed document, which we have marked, pursuant to section 552.022(a)(17) of the Government Code. The city must also release the submitted results of the analysis of the breath specimen to this requestor pursuant to section 724.018 of the Transportation Code. With the exception of basic information, which the city must release, 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.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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

³Section 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).

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 cursive script, appearing to read "Kristi L. Godden".

Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/eb

Ref: ID# 532094

Enc. Submitted documents

c: Requestor
(w/o enclosures)