



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1994

Ms. Karen Hendershot Bailey
Assistant City Attorney
Legal Department
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR94-450

Dear Ms. Bailey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26176.

The City of Victoria (the "city") has received a request for the arrest report and breathalyzer test results generated in connection with the arrest of the requestor on April 1, 1994. You do not object to release of the requested arrest report, and thus, we assume that you have released it. However, you claim that sections 552.103(a) and 552.108 of the Government Code except the requested breathalyzer test results from required public disclosure.

Section 552.108 excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

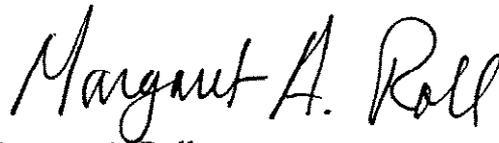
When a case is under active investigation or prosecution, section 552.108 excepts from disclosure all information relating to the investigation except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976) (citing *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curium*, 536 S.W.2d 559 (Tex.

1976). In closed cases, however, the governmental body must demonstrate that releasing the requested information would unduly interfere with law enforcement or prosecution before it can withhold any of the information under section 552.108. Open Records Decision No. 611 (1992) at 2.

You advise us that the requested breathalyzer test results, which you have submitted to us for review, relate to pending criminal prosecution. We have reviewed the submitted materials, and we conclude that the city may withhold them from required public disclosure under section 552.108 at least until the case is closed. See Open Records Decision No. 478 (1987) (holding that section 552.108 excepts intoxilyzer test results that relate to pending criminal case). As we resolve this matter under section 552.108 of the Government Code, we need not address the applicability of section 552.103(a) at this time.¹

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref: ID# 26176

Enclosures: Submitted documents

cc: Mr. Alfred Ward Williams
P.O. Box 7894
Victoria, Texas 77902
(w/o enclosures)

¹We remind you that both sections 552.108 and 552.103 are discretionary exceptions to required public disclosure. See Gov't Code § 552.007. Therefore, the city may choose to release to the public some or all of the requested information.