



November 8, 2001

Mr. Joe F. Grubbs
District Attorney
Ellis County
1201 North Highway 77, Suite B
Waxahachie, Texas 75165-5140

OR2001-5163

Dear Mr. Grubbs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154561.

The Ellis County and District Attorney (the "attorney") received a request for any and all test results pertaining to a specified individual's blood alcohol content and any and all photographs and videotapes taken in connection with the individual's DWI arrest. You claim that the submitted test results and videotape are excepted under section 552.108 of the Government Code. Because you have not requested a decision for the requested photographs, we assume you have released any existing photographs. If not, you must do so at this time. *See Gov't Code §§ 552.301, .302.* We have considered your asserted exception and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See Gov't Code § 552.304* (providing for submission of public comments).

Initially, we note that section 724.018 of the Transportation Code provides as follows: "On 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." Where a statute provides an individual with a special right of access to information, that information may not be withheld from that individual pursuant to section 552.108, the law-enforcement exception. *See Open Records Decision Nos. 623 (1994), 613 (1993).* Therefore, if the requestor is the attorney for the individual who provided a specimen, then you must provide the requestor with the test results. However, if the requestor is not the attorney for the individual who provided the specimen, then the

requestor has no special right of access to the test results.¹ Therefore, we will address the applicability of section 552.108 to the test results and the videotape.

Section 552.108(a)(1) excepts from disclosure information 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. You state that the alleged DWI offense is still pending. Accordingly, we find that release of the test results and videotape 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), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that you may withhold the test results and the videotape under section 552.108(a)(1). However, if the requestor is the attorney for the individual who provided the specimen, then you must release the test results to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

¹You state that the requestor is not the individual's criminal defense attorney. Although you explain that the requestor is the civil attorney for the plaintiff in a civil lawsuit arising from the DWI incident, we are unable to determine whether the plaintiff in the civil case is the individual who provided the blood specimen.

at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 154561

Enc: Submitted documents

c: Mr. J. Scott Perry
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