



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 28, 2003

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2003-2819

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180233.

The Tarrant County District Attorney's Office (the "district attorney") received a request for records pertaining to the requestor's client's arrest. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the subject of the requested information has submitted a specimen to a peace officer for an intoxilyzer test. 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." Transp. Code § 724.018. As the requestor is an attorney for the person who took the breath test, the district attorney must release the results of the breath test to the requestor.

Next, we note that two of the submitted documents, which we have marked, are subject to section 552.022 of the Government Code. Section 552.022 provides that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

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

Gov't Code § 552.022(a)(17). These documents must be released to the requestor pursuant to section 552.022, unless they are confidential under other law. Although the district attorney claims that these documents are excepted from disclosure pursuant to section 552.108 of the Government Code, we note that this exception is a discretionary exception to disclosure under the Public Information Act (the "Act") that does not constitute "other law" for purposes of section 552.022.<sup>1</sup> Accordingly, we conclude that the district attorney may not withhold these documents pursuant to section 552.108 of the Government Code. Consequently, the district attorney must release these two documents to the requestor.

You claim that the remaining submitted information is excepted from disclosure pursuant to section 552.108. We note that section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. See Gov't Code § 552.108(a)(2). You state that the requested information pertains to a criminal prosecution that resulted in a dismissal in the interest of justice by the district attorney. Thus, we understand from your representation that the remaining submitted information relates to a case that has concluded in a final result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to this information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. See Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). See Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, including detailed description of offense). Accordingly, with the exception of basic information that is contained throughout the remaining submitted information, we conclude that the district attorney may withhold this information pursuant

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<sup>1</sup> Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. See, e.g., Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive section 552.111), 586 (1991) (governmental body may waive section 552.108) 522 at 4 (1989) (discretionary exceptions in general).

to section 552.108(a)(2) of the Government Code. Because we base our ruling on section 552.108 of the Government Code, we need not address your remaining claimed exceptions to disclosure.

In summary, the district attorney must release the results of the submitted breath test, as well as the marked public court records. With the exception of basic information, the district attorney may withhold the remaining submitted information pursuant to section 552.108(a)(2) of the Government Code.

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

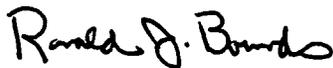
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If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 180233

Enc. Marked documents

c: Mr. Ralph Henry Bauer  
Attorney at Law  
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(w/o enclosures)