



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2007

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773

OR2007-05678

Dear Ms. Smith:

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# 281938.

The Texas Department of Public Safety (the "department") received four requests from three requestors for information relating to a traffic accident. The first requestor seeks "[d]ashcam video, 911 calls and radio transmission" from the accident. The second requestor seeks the "dash cam video of the squad car." The third requestor, who represents one of the individuals involved in the traffic accident, submitted two identical requests seeking all information relating to the accident. You state that the department does not have the requested 911 calls or radio transmissions. You state that the department has released the crash report and basic information to the third requestor. You claim that the remaining information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that information requested by the third requestor includes court-filed documents. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See* Gov't Code § 552.022(a)(17). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, section 552.108 does not

constitute other law for purposes of section 552.022(a)(17), and the department may not withhold the court-filed documents on that ground.

Next, we note that the information requested by the third requestor includes the results of a test of an arrestee's blood alcohol content. Full information concerning the analysis of the specimens must be made available upon the request of the person who has given specimens at the request of a peace officer. Transp. Code § 724.018. Here, the third requestor represents the individual who submitted the specimen. Thus, the department must release the blood test results to the third requestor.

We next address your claim that the information you have marked is excepted from disclosure under section 552.108 of the Government Code. This section provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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 requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to two pending criminal investigations. Based upon this representation, we conclude that releasing the information you have marked, which includes the dash cam video, 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) (delineating law enforcement interests that are present in active cases). Therefore, we agree that the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. We note that the department has the discretion to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We note that the remaining information requested by the third requestor includes Texas motor vehicle record information. Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). However, section 552.130 protects personal privacy. In this instance, the third requestor identifies himself as an attorney for the individual to whom some of the submitted Texas motor vehicle record information belongs. As such, this requestor has a right of access to his client's driver's license and motor vehicle information under

section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual).¹ Therefore, the Texas motor vehicle record information of the third requestor's client may not be withheld in this instance under section 552.130. However, the remaining Texas motor vehicle record information that the department has marked must withhold under this exception.

In summary, the department must release blood alcohol test result to the third requestor. *Other than court-filed documents, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. Other than information belonging to the third requestor's client, the department must withhold the Texas motor vehicle record information that you have marked under section 552.130 of the Government Code. The remaining information, which is responsive only to the requests submitted by the third requestor, must be released.*

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, *beyond the right of the general public*, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

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 Office of the Attorney General 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/eeg

Ref: ID# 281938

Enc. Submitted documents

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