



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2009

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-02099

Dear Ms. McClellan:

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# 337050.

The Dallas Police Department (the "department") received a request for a copy of a specified offense report and related crime scene video. You indicate that you will release the Texas Peace Officer's Crash Report. *See* Transp. Code § 550.065(c)(4) (governmental body must release accident report to a person who provides two of the following three items of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident). You claim that the remaining submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge that the department failed to request a ruling from our office as prescribed by section 552.301. Gov't Code §552.301(b), (e). A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Gov't Code §552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide a compelling reason why the information should not be disclosed. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open

Records Decision No. 150 (1977). The need of a governmental body, other than the agency that is seeking an open records ruling, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586 (1991). Because you inform us that the Dallas District Attorney's Office (the "district attorney") objects to the release of the information at issue, we will consider its claim regarding section 552.108. Further, because section 552.130 of the Government Code can provide a compelling reason to withhold information, we will consider your argument under that exception.

We note that the submitted information includes breath test results. Section 724.018 of the Transportation Code provides that upon the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. In this instance, the requestor is the person who gave the breath specimen at the request of a peace officer. Therefore, the department must release the requestor's breath test results contained in the submitted information under section 724.018 of the Transportation Code.

Section 552.108 excepts from disclosure "[i]nformation 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[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. See § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Based on the district attorney's assertion that release of the submitted information would negatively affect its ability to successfully prosecute this case, we conclude that section 552.108(a)(1) is generally applicable in this instance. 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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

In summary, the department must release the breath test results to the requestor pursuant to section 724.018 of the Transportation Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1).¹ We note

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

that you have the discretion to release all or part of the remaining information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

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.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/eb

Ref: ID# 337050

Enc. Submitted documents

c: Requestor
(w/o enclosures)