



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2009

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2009-10196

Dear Mr. Reyna:

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# 349727 (ORR 2009-3327).

The San Antonio Police Department (the "department") received a request for information related to case number 90301784. You claim that the requested 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.

We first note that the submitted information includes intoxilyzer 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. Transp. Code § 724.018. As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). In this instance, the requestor is the person who gave the specimen at the request of a peace officer. Therefore, pursuant to section 724.018 of the Transportation Code, the department must release the intoxilyzer results contained in the submitted information to the requestor.

We next note that the submitted documents include a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064. Section 552.101 of the Government Code excepts from disclosure "information considered

to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. This section encompasses information protected by other statutes, including section 550.065 of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of the accident report to a person who provides two or more of the following three pieces of information: (1) date of the accident; (2) specific location of the accident; and (3) name of any person involved in the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has not provided two of the three items of information specified by section 550.065(c)(4). Therefore, the department must withhold the submitted accident report pursuant to section 550.065(b) of the Transportation Code.

You claim that the remaining information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a pending criminal investigation. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable to the remaining information. *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).

We note, however, that the information at issue contains a “Statutory Warning” and a “Notice of Suspension.” The department provided copies of these forms to the cited individual. You have not explained how releasing this information, which has already been seen by the defendant, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the statutory warning and notice of suspension may not be withheld under section 552.108.

We further note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

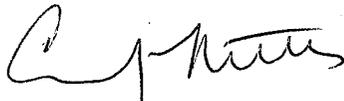
types of information deemed public by *Houston Chronicle*). Except for basic information, the statutory warning, and the notice of suspension, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, pursuant to section 724.018 of the Transportation Code, the department must release the intoxilyzer results contained in the submitted information to the requestor. The department must withhold the submitted accident report pursuant to section 550.065(b) of the Transportation Code. With the exception of basic information, the statutory warning, and the notice of suspension, which must all be released, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.²

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 349727

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²The requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a). Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.