



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2010

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2010-00730

Dear Mr. Ohnemiller:

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# 367413.

The Midland Police Department (the "department") received a request for a specified incident report involving the requestor. You state the department has provided basic information to the requestor. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the submitted incident report 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, we note the submitted information includes the blood test results of an arrestee's blood alcohol content. "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. Here, the requestor is the individual who submitted the specimen. Thus, the department must release the blood test results we have marked to the requestor.

Next, we note the remaining information contains a search warrant, which has been filed with a court, and a court order for assistance in execution of the search warrant. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. Such information must be released unless it is expressly confidential under other law. You claim

the search warrant and court order are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the department may not withhold the search warrant and court order, which we have marked, under section 552.108 of the Government Code. As you have claimed no other exceptions to disclosure for these documents, they must be released.

Section 552.108(a)(1) of the Government Code 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note the remaining information includes a statutory warning and a notice of suspension. Because copies of these documents have been provided to the arrestee, we find their release will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold the statutory warning and notice of suspension, which we have marked, under section 552.108(a)(1) of the Government Code.

You state the remaining information pertains to a pending criminal investigation. Based on your representations and our review, we determine release of the remaining information 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). Accordingly, the department may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code.¹ We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

You claim the Texas driver's license number in the statutory warning and notice of suspension is excepted under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Section 552.130, however, protects privacy interests. In this case, the driver's license number at issue belongs to the requestor, who has a right of access under

¹As our ruling is dispositive for this information, we need not address your remaining argument against disclosure for portions of this information.

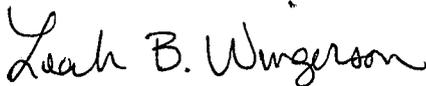
section 552.023 to his own driver's license number. *Id.* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles). Therefore, the requestor's driver's license number in the statutory warning and notice of suspension may not be withheld under section 552.130 of the Government Code. As you have claimed no other exceptions to disclosure for the statutory warning and notice of suspension, they must be released.

In summary, the department must release to the requestor the marked blood test results pursuant to section 724.018 of the Transportation Code, and the marked search warrant and court order pursuant to section 552.022(a)(17) of the Government Code. With the exception of the marked statutory warning and notice of suspension, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 367413

Enc. Submitted documents

c: Requestor
(w/o enclosures)