



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2013

Mr. Daniel Plake
Assistant County Attorney
Open Records Division
Montgomery County
207 West Phillips Street, Suite 100
Conroe, Texas 77301

OR2013-05100

Dear Mr. Plake:

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# 487335 (ORR# 2013-1315).

The Montgomery County Sheriff's Department (the "department") received a request for information related to case number 12A-017204. You state some responsive information has been released to the requestor. You claim the submitted 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 the information you seek to withhold includes breath test results of an individual's blood alcohol content. Section 724.018 of the Transportation Code provides, on 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. Transp. Code § 724.018. In this instance, the requestor is the attorney representing the person who provided the specimens at the request of a peace officer. Although you raise section 552.108 of the Government Code for this information, the exceptions to disclosure found in the Act generally do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the submitted intoxilyzer results must be released to this requestor pursuant to section 724.018 of the Transportation Code.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note the submitted information includes a statutory warning and a notice of suspension, forms DIC-24 and DIC-25. Because copies of those documents are provided to the person who is the subject of the warning and the notice, we find release of the statutory warning and the notice of suspension will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the statutory warning and the notice of suspension may not be withheld under section 552.108 and must be released.¹

You state, and have provided an affidavit from the Montgomery County District Attorney’s Office confirming, release of the remaining information would interfere with a pending criminal prosecution. Based on your representation and the affidavit, we find release of the information at issue 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) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

As you acknowledge, 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 offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic offense and arrest information, even if the information does not literally appear on the front page of an offense or arrest report. Except for basic information, which you state has already been released, the statutory warning, and the notice of suspension, which also must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the submitted intoxilyzer results must be released to this requestor pursuant to section 724.018 of the Transportation Code. Basic information, the statutory warning, and

¹We note the statutory warning and the notice of suspension contain the requestor’s client’s driver’s license information, which the department would be required to withhold from the general public under section 552.130 of the Government Code. Because section 552.130 protects personal privacy, the requestor has a right of access to his client’s driver’s license 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 requests information concerning himself).

the notice of suspension must also 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 487335

Enc. Submitted documents

c: Requestor
(w/o enclosures)