



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2013

Mr. Habib H. Erkan, Jr.
Denton, Navarro, Rocha & Bernal, P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2013-09919

Dear Mr. Erkan:

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# 494661.

The Live Oak Police Department (the "department"), which you represent, received a request for information related to case number 1304-0831. You claim 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.

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).

You state, and have provided a letter from the Bexar County Criminal District Attorney's Office (the "district attorney's office") confirming, the remaining information relates to an on-going criminal investigation. The district attorney's office asserts release of the information at issue "would interfere with the investigation and prosecution of criminal activity." Based on these representations, we find 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) (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 must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must release the submitted intoxilyzer results to this requestor pursuant to section 724.018 of the Transportation Code. Basic information 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to 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# 494661

Enc. Submitted documents

c: Requestor
(w/o enclosures)