



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2013

Mr. Steven E. Meyer
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2013-16702

Dear Mr. Meyer:

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# 503808 (Police Dept. Reference No. 12415).

The Arlington Police Department (the "department") received a request for information relating to an offense of driving while intoxicated. 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.

We first note the submitted information includes an analysis of a breath specimen. Section 724.018 of the Transportation Code provides that "[o]n 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. As a general rule, the general 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 provided the breath specimen at the request of a peace officer. Therefore, the submitted results of the analysis of the breath specimen must be released to this requestor pursuant to section 724.018 of the Transportation Code.

We next note the submitted information includes court-filed documents. A document that has been filed with a court is expressly public under section 552.022 of the Government

Code and may not be withheld unless it is confidential under the Act or other law. *See* Gov't Code §552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See* Gov't Code. § 552.007; Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Accordingly, the department may not withhold the court-filed documents, which we have marked, under section 552.108. As no other exceptions are raised for this information, it 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(a)(1) 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). You state the submitted information pertains to a pending and open investigation of the department. We note, however, that the remaining information includes a DIC-24 statutory warning and a DIC-25 notice of suspension. The department provided a copy of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the DIC-24 form and the DIC-25 form may not be withheld under section 552.108. Based on your representation and our review, we conclude that release of the remaining 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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree section 552.108(a)(1) of the Government Code is applicable to the remaining information at issue.

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). Basic information refers to the 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*). Therefore, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code but must release the DIC-24 and DIC-25 forms and basic information.

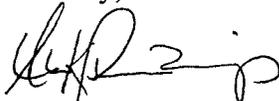
In summary, the department must release the submitted results of the analysis of the breath specimen pursuant to section 724.018 of the Transportation Code, and the court-filed documents pursuant to section 552.022 of the Government Code. Except for the DIC-24 statutory warning, the DIC-25 notice of suspension and basic information, the department

may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code. The remaining information must be released.¹

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,



Alia K. Plasencia-Bishop
Assistant Attorney General
Open Records Division

AKPB/eb

Ref: ID# 503808

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ We note this requestor has a right of access to the information being released, which is confidential with respect to the general public. Gov't Code § 552.023. Therefore, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.