



February 17, 2015

Sergeant Alex Arnold
Northlake Police Department
1400 FM 407
Northlake, Texas 76247

OR2015-03082

Dear Sergeant Arnold:

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# 553766.

The Northlake Police Department (the "department") received a request for a specified police report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code.¹ 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 individual's blood alcohol content. Section 724.018 of the Transportation Code provides "[o]n request of the 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. The requestor is the person who provided the specimen at the request of a peace officer. Although you claim this information is excepted from disclosure under section 552.108 of the Government Code, a specific right of access provision prevails over the Act's general exceptions to disclosure. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Thus, the department must release the blood test results we have marked pursuant to section 724.018 of the Transportation Code.

¹Although you raise section 552.022 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly made confidential under the Act or other law. *See* Gov't Code § 552.022.

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 indicate the remaining information pertains to an ongoing case. We note the remaining information includes a DIC-24 statutory warning and a DIC-25 notice of suspension. Copies of these forms were provided to the requestor. You have not explained how releasing this information, which has already been seen by the requestor, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms we have marked may not be withheld under section 552.108(a)(1). However, based on your representation and our review, we find the 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). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, we note 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 (1976) (summarizing types of information considered to be basic information). We note basic information includes an arrestee’s social security number, but does not include motor vehicle record information subject to section 552.130 of the Government Code. *See id.* Thus, with the exception of basic information and the marked DIC-24 and DIC-25 forms, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. You argue any dates of birth within the information being released are excepted from disclosure under section 552.101 in conjunction with section 32.51 of the Penal Code. Section 32.51 of the Penal Code provides, in relevant part,

(b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of:

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

- (1) identifying information of another person without the other person's consent;
- (2) information concerning a deceased natural person, including a stillborn infant or fetus, that would be identifying information of that person were that person alive, if the item of information is obtained, possessed, transferred, or used without legal authorization; or
- (3) identifying information of a child younger than 18 years of age.

Penal Code § 32.51(b). "Identifying information" means "information that alone or in conjunction with other information identifies a person" and includes a person's date of birth. *Id.* § 32.51(a)(1)(A). You assert the dates of birth at issue meet the definition of "identifying information" under section 32.51(a)(1)(A) of the Penal Code. However, section 32.51(b) does not prohibit the transfer of identifying information of another person unless the transfer is made "with the intent to harm or defraud another[.]" *See id.* § 32.51(b). In this instance, the department's release of the information at issue would be for the purpose of complying with the Act, and not with the intent to harm or defraud another. Therefore, section 32.51(b) of the Penal Code does not prohibit the department from transferring the requested information in this instance. Accordingly, the department may not withhold any dates of birth in the information being released under section 552.101 of the Government Code in conjunction with section 32.51 of the Penal Code.

You also argue any dates of birth in the information being released are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code. Section 521.051 of the Business and Commerce Code provides,

- (a) A person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

Bus. & Comm. Code § 521.051(a) (formerly Bus. & Comm. Code § 48.101(a)). "Personal identifying information" means "information that alone or in conjunction with other information identifies an individual" and includes an individual's date of birth. *Id.* § 521.002(a)(1)(A). You assert the dates of birth at issue meet the definition of "personal identifying information" under section 521.002(a)(1) of the Business and Commerce Code. *See id.* § 521.002(a)(1). We note section 521.051(a) of the Business and Commerce Code does not prohibit the transfer of personal identifying information of another person unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name without that person's consent. *See id.* § 521.051(a). As noted above, in this instance, the department's release of the

information at issue would be for the purpose of complying with the Act, and not “with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value[.]” *See id.* Therefore, section 521.051(a) of the Business and Commerce Code does not prohibit the department from transferring the requested information. Accordingly, the department may not withhold any dates of birth in the information being released under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. We note the marked DIC-24 and DIC-25 forms contain motor vehicle record information subject to section 552.130. However, we note section 552.130 protects personal privacy. Thus, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code, and it may not be withheld from him under section 552.130 of the Government Code. *See id.* § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov’t Code § 552.147(a). We understand you seek to withhold the requestor’s social security number in the basic information under section 552.147. However, we note section 552.147 protects personal privacy. Thus, the requestor has a right of access to his own social security number under section 552.023 of the Government Code, and it may not be withheld from him under section 552.147 of the Government Code. *See id.* 552.023(a); ORD 481 at 4.

In summary, the department must release the blood test results we have marked pursuant to section 724.018 of the Transportation Code. With the exception of basic information and the marked DIC-24 and DIC-25 forms, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

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.

³We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for this information from a different requestor, the department must seek another ruling from this office.

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,

A handwritten signature in black ink, appearing to read "Alley Latham", with a long, sweeping underline that extends to the right.

Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 553766

Enc. Submitted documents

c: Requestor
(w/o enclosures)