



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 8, 2017

Ms. D. Kaylyn Betts
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2017-17879

Dear Ms. Betts:

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# 676300 (PIR# 17-5178).

The Texas Department of Public Safety (the "department") received a request for a specified offense report. You state you have released some information 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 submitted information includes Forensic Breath Alcohol Analytical Reports. Section 724.018 of the Transportation Code provides that "[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. Here, the requestor is the individual who submitted the specimen. Although you claim the 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). Therefore, the department must release the Forensic Breath Alcohol Analytical Reports 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 claiming section 552.108(a)(1) must 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 remaining information pertains to a pending criminal case. Based on your representation, we conclude the 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 that are 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 information at issue. Accordingly, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must release the Forensic Breath Alcohol Analytical Reports pursuant to section 724.018 of the Transportation Code. The department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

Finally, although you ask this office to issue a previous determination permitting the department to withhold information subject to section 552.108(a)(1) of the Government Code without the necessity of requesting an attorney general opinion, we note that in Open Records Letter No. 2017-17508 (2017) this office already issued such a previous determination to the department. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code).

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 676300

Enc. Submitted documents

c: Requestor
(w/o enclosures)