



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 6, 2019

Mr. Robert L. Dillard, III  
Counsel for City of University Park  
Nichols, Jackson, Dillard, Hager & Smith, L. L. P.  
500 North Akard, Suite 1800  
Dallas, Texas 75201

OR2019-06279

Dear Mr. Dillard:

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# 760504 (File Reference # 105955).

The City of University Park (the "city") received a request for information pertaining to a specified incident. You state the city has released some information. 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 contains court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the city seeks 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* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Accordingly, the city may not withhold the court-filed documents, which we marked, under section 552.108. As you raise no other exceptions to disclosure of the marked court-filed documents, they must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure of the remaining information.

Initially, we note the submitted information includes the breath test results of the requestor'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. 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 city must release the intoxilyzer results we marked 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 investigation. We note the remaining information includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. Because copies of these forms were provided to the arrestee, we find the city has not demonstrated release of the DIC-24 and DIC-25 forms will interfere with the detection, investigation, or prosecution of crime. Accordingly, we conclude the DIC-24 and DIC-25 forms may not be withheld under section 552.108(a)(1). However, based on your representation and our review, we conclude the 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). Thus, section 552.108(a)(1) is applicable to the remaining information.

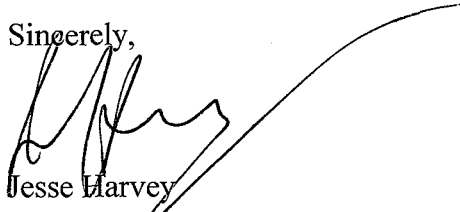
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the DIC-24 and DIC-25 forms, the information subject to section 552.022, and basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the city must release the intoxilyzer results we marked to this requestor pursuant to section 724.018 of the Transportation Code. With the exception of the DIC-24 and DIC-25 forms, the information subject to section 552.022, and basic information, the city 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](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,



Jesse Harvey  
Assistant Attorney General  
Open Records Division

JH/gw

Ref: ID# 760504

Enc. Submitted documents

c: Requestor  
(w/o enclosures)