



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 8, 2019

Mr. Oscar G. Gabaldón, Jr.
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2019-06601

Dear Mr. Gabaldón:

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# 759960 (City Ref. No. 19-1026-10181).

The City of El Paso (the "city") received a request for all information related to a specified incident. You state you will release some information to the requestor, including the DIC-24 and DIC-25 forms. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes 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 expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court-filed documents under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and do not make information confidential under the Act. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.— Dallas 1999, no pet.) (governmental body may waive section 552.103); 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 section 552.108 subject to waiver). Therefore, the city may not withhold the court-filed documents,

which we have marked, under section 552.103 or section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the city must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code.

Next, we note the submitted information includes Toxicology/Blood Alcohol Kit Laboratory Submission Forms and a Specimen Routing Report. Section 724.018 of the Transportation Code provides that, 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. Although you claim the information is excepted from disclosure under section 552.103 and 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). In this instance, the requestor represents the person who provided the blood specimen at the request of a peace officer. Therefore, the submitted Toxicology/Blood Alcohol Kit Laboratory Submission Forms and Specimen Routing Report must be released to this requestor pursuant to section 724.018 of the Transportation Code.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, 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 relates to an ongoing prosecution, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude 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 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103. *See* Open Records Decision No. 597 (1991).

In summary, the city must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. The submitted Toxicology/Blood Alcohol Kit Laboratory Submission Forms and Specimen Routing Report must be released to this requestor pursuant to section 724.018 of the Transportation Code. With the exception of basic information, which must be released, 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, 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/gw

Ref: ID# 759960

Enc. Submitted documents

c: Requestor
(w/o enclosures)