



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2020

Ms. Melba F. Barreiro
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2020-17223

Dear Ms. Barreiro:

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# 835147 (ORR# 3301).

The City of Bryan (the "city") received a request for information pertaining to the requestor. The city claims the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted 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, 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. *See* Transp. Code § 724.018. A statutory right of access prevails over the Act's general exceptions to public disclosure and, thus, the department may not withhold this information under section 552.103 or 552.108 of the Government Code. Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, the department must release the submitted breath test results pursuant to section 724.018 of the Transportation Code.

Next, we note portions of the submitted video recordings are subject to article 2.1396 of the Code of Criminal Procedure, which provides as follows:

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or
- (4) a procedure in which a specimen of the person's breath or blood is taken.

Crim. Proc. Code art. 2.1396. The remaining information includes video recordings made by or at the direction of officers employed by the city's police department that contain footage of the requestor being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 (“A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.”). Thus, the requestor is entitled to receive these portions of the video recordings pursuant to article 2.1396 of the Code of Criminal Procedure and the city may not withhold this information under section 552.103 or 552.108. *See* ORDs 613, 451. Accordingly, the city must release the portions of the submitted video recordings that depict the stop, the arrest, the conduct of the requestor or a procedure in which a specimen of the blood or breath of the requestor is taken under article 2.1396 of the Code of Criminal Procedure.

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). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue 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, 710 (Tex. 1977). We note the remaining information includes a DIC-24 statutory warning and a DIC-25 notice of suspension. Because the city provided copies of these forms to the requestor, we find their release will not interfere with the detection, investigation, or prosecution of crime. Therefore, the city may not withhold the submitted DIC-24 statutory warning and DIC-25 notice of suspension under section 552.108(a)(1). The city states the remaining information relates to a pending criminal investigation. Based on 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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*). Thus, with the exception of the submitted DIC-24 statutory warning, the submitted DIC-25 notice of suspension, and basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, the city must release the following: (1) the submitted breath test results pursuant to section 724.018 of the Transportation Code; (2) the portions of the submitted video recordings that depict the stop, the arrest, the conduct of the requestor or a procedure in which a specimen of the blood or breath of the requestor is taken under article 2.1396 of the Code of Criminal Procedure; (3) the submitted DIC-24 statutory warning; (5) the submitted DIC-25 notice of suspension; and (6) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 835147

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we do not address the other arguments of the city to withhold the submitted information, except to note basic information may not be withheld from public disclosure under section 552.103. See Open Records Decision No. 597 at 2-3 (1991).