



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 31, 2003

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2003-2174

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178727.

The City of Fort Worth (the "city") received a request for any additional information in the city's files related to a specific fatality accident. You claim that the requested 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.

We begin by noting that included among the documents you seek to withhold are several accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the city with two of the three pieces of information regarding the traffic accident at issue. Thus, the city must withhold the submitted accident reports under section 550.065(b) of the Transportation Code.

Next, we note that the submitted materials, labeled as Exhibit C, contain a search warrant affidavit. An executed search warrant affidavit is made public by statute. *See* Code Crim. Proc. art. 18.01(b). As the search warrant has been executed, the submitted search warrant affidavit must be released in its entirety.

We also note that Exhibit C includes documents that are indicated to have been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, as prescribed by section 552.022, these public court documents must be released to the requestor unless they are confidential under other law. Sections 552.103 and 552.108 are discretionary exceptions under the Public Information Act and are therefore not "other law" that makes information confidential. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential). However, certain information contained within these documents is expressly confidential under sections 552.130 and 552.136 of the Government Code.

Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Accordingly, we have marked the information in the documents that the city must withhold pursuant to section 552.130.

Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value;
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, the city must withhold the access device numbers we have marked pursuant to section 552.136 of the Government Code. In sum, the documents we have marked in Exhibit C are not excepted from required disclosure and must be made available to the requestor after confidential information is redacted.

We will now address your claimed exceptions with respect to the remaining information. Section 552.108(a) 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." Generally, a governmental body claiming section 552.108 must reasonably

explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the documents submitted as Exhibit C were created by a police officer in connection with a case pending criminal prosecution. You further state that the case has been submitted to the Tarrant County District Attorney's Office, who is charging the driver of the vehicle with Intoxication Manslaughter. Based upon these representations and our review of the submitted information, we agree that the release of the remainder of Exhibit C 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that the submitted information contains an offense report. Information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007. As we are able to make this determination, we need not address your remaining argument against disclosure.

To summarize, we conclude that: (1) the submitted search warrant affidavit must be released in its entirety; (2) the documents we have marked in Exhibit C are not excepted from required disclosure under section 552.022(a)(17) and must be made available to the requestor after confidential information, which we have marked, is redacted pursuant to sections 552.130 and 552.136 of the Government Code; (3) basic front page offense report information must be released pursuant to section 552.108(c) of the Government Code; and (4) the city may withhold the remaining information under 552.108(a)(1).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 178727

Enc. Submitted documents

c: Mr. Barry Martines
2601 Airport Freeway, Ste. 100
Fort Worth, Texas 76111
(w/o enclosures)