



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2004

Mr. Sim W. Goodall
Police Legal Advisor
City of Arlington
P. O. Box 90231
Arlington, Texas 76004-3231

OR2004-0302

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194345.

The Arlington Police Department (the "department") received two requests from different requestors for certain information pertaining to a specified accident. You indicate that some responsive information does not exist.¹ You claim that the remaining requested information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the submitted information includes "Texas Peace Officer's Accident Reports," which are subject to chapter 550 of the Transportation Code. Section 550.065(b) provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. -San Antonio 1978, writ dism'd). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

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. *See id.* In this case, we find that the requestors have provided the department with at least two of the three pieces of information required under section 550.065(c)(4). Accordingly, we conclude that the department must release the accident reports that we have marked pursuant to section 550.065(c)(4) of the Transportation Code.

Next, we note that the remaining submitted information includes portions of a custodial death report that are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with article 49.18(b) of the Code of Criminal Procedure.² In Open Records Decision No. 521 at 5 (1989), this office concluded that under article 49.18(b), in conjunction with a directive issued by the attorney general, section one of a custodial death report filed with this office is public information, but sections two through five of the report, as well as attachments to the report, are confidential. *See* Code Crim. Proc. art. 49.18(b) (attorney general shall make report, with exception of portion of report that attorney general determines is privileged, available to any interested person). Accordingly, we conclude that the department must release section one of this report to the requestors. However, because sections two through five of the report, as well as any attachments to the report, are deemed confidential under article 49.18(b), we also conclude that the department must withhold this particular information pursuant to section 552.101 of the Government Code in conjunction with article 49.18(b) of the Code of Criminal Procedure.

You claim that the remaining submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "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) as an exception to disclosure of requested information must demonstrate how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the remaining submitted information pertains to a pending and open criminal investigation being conducted by the department. Based on your representations and our review of the remaining submitted information, we find that section 552.108(a)(1) is applicable to this information.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, including detailed description of offense). Accordingly, with the exception of basic information that must be released to the requestors, we conclude that the department may withhold the remaining submitted information pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the department maintains the discretion to release all or part of this information that is not otherwise confidential by law.³ *See* Gov't Code § 552.007.

In summary, the department must release the accident reports that we have marked pursuant to section 550.065(c)(4) of the Transportation Code. The department must also release section one of the marked custodial death report, but must withhold sections two through five of this report, as well as any attachments to the report, pursuant to section 552.101 of the Government Code in conjunction with article 49.18(b) of the Code of Criminal Procedure. With the exception of basic information that must also be released, the department may withhold the remaining submitted information pursuant to section 552.108(a)(1) of the Government Code.

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).

³ Because we base our ruling with respect to the remaining submitted information on section 552.108(a)(1) of the Government Code, we need not address your remaining claim with regard to this information. We note that "basic information" may not generally be withheld under section 552.103 of the Government Code. *See* Open Records Decision Nos. 597 (1991), 362 (1983).

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 194345

Enc. Marked documents, audiotape, and CD-Roms

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