



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2008

Mr. Michael J. Sandlin
Assistant District Attorney
Dallas County
Frank Crowley Courts Building
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2008-17041

Dear Mr. Sandlin:

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# 334177.

The Dallas County District Attorney's Office (the "district attorney") received a request for information relating to a specified traffic accident. You state you do not have a portion of the requested information.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

Initially, we note the submitted information includes a document that has been filed with a court. Section 552.022 of the Government Code provides in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the city. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...
(17) information that is also contained in the public court record[.]

Gov't Code § 552.022(a)(17). Section 552.022(a)(17) makes information filed with a court expressly public unless it contains information that is expressly confidential under other law. You claim the court-filed document is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary exceptions that protect a governmental body's interests and are therefore not "other law" for purposes of section 552.022(a)(17). *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), 586 (1991) (governmental body may waive section 552.108). Therefore, the district attorney may not withhold the court-filed document, which we have marked, under section 552.103 or section 552.108 of the Government Code. As you have claimed no other exceptions to disclosure of the court-filed document, it must be released.

Next, we note the remaining information that is not subject to section 552.022 contains a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states 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. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation 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 this instance, the requestor has provided the district attorney with two of the three requisite pieces of information; thus, the district must release the submitted CR-3 accident report form pursuant to section 550.065(c)(4) of the Transportation Code.

Next, you claim the remaining information that is not subject to section 552.022 is excepted from disclosure under section 552.108 of the Government Code. 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." Gov't Code § 552.108(a). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551

S.W.2d 706 (Tex. 1977). You inform us the information at issue relates to a pending criminal prosecution. Based upon your representation, we conclude the release of the remaining information not subject to section 552.022 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). Thus, we agree section 552.108(a)(1) is generally applicable to the remaining information that is not subject to section 552.022.

We note section 552.108 of the Government Code 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 front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. Accordingly, with the exception of basic information, which must include a detailed description of the offense, the district attorney may withhold the remaining information that is not subject to section 552.022 under section 552.108(a)(1) of the Government Code.

In summary, the district attorney must release the court-filed document pursuant to section 552.022(a)(17) and the CR-3 accident report form pursuant to section 550.065(c)(4). With the exception of basic information, the district attorney may withhold the remaining information under section 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

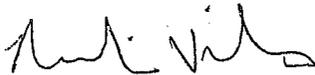
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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 Office of the Attorney General 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. 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/eeg

Ref: ID# 334117

Enc. Submitted documents

c: Requestor
(w/o enclosures)