



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2009

Ms. P. Armstrong
Mr. Samuel D. Hawk
Assistant City Attorneys
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-03203

Dear Ms. Armstrong and Mr. Hawk:

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# 340892 (DPD ORR Nos. 2008-8868 and 2009-0473).

The Dallas Police Department (the "department") received requests from two requestors for information relating to a fatal accident. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

We first note, and you acknowledge, that the department did not comply with its ten-business-day deadline under section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(a)-(b). The department also failed to comply with its fifteen-business-day deadline under section 552.301(e). *See id.* § 552.301(e)(1)(A)-(D). The submitted information is therefore presumed to be subject to required public disclosure under

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

section 552.302 of the Government Code and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; 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 Gov't Code § 552.108 subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us that the Dallas County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the information at issue. Therefore, we will determine whether the department may withhold that information on behalf of the district attorney under section 552.108. We also will consider your claims under sections 552.101 and 552.130 of the Government Code, which can provide compelling reasons for non-disclosure.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 550.065(b) of the Transportation Code states 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 of accident reports to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See 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 of the items of information specified by the statute. *Id.* The submitted information includes a Texas Peace Officer's Crash Report that was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). In this instance, the first requestor has provided the department with two of the three specified items of information. Therefore, the submitted crash report must be released to the first requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. However, the second requestor has not provided the department with two of the three specified items of information. Therefore, the crash report must be withheld from the second requestor pursuant to section 550.065(b).

Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental

body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked portions of the remaining documents that the department seeks to withhold under section 552.108. You also seek to withhold the submitted photographs under section 552.108. You state that the marked information and photographs are related to a pending prosecution. You also state that the district attorney has indicated to the department that the release of the information in question at this time would interfere with the prosecution of the case. Based on your representations, we conclude that the department may withhold the marked information and the photographs on behalf of the district attorney under section 552.108(a)(1). *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).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130(a)(1)-(2). We note that this exception protects personal privacy. Therefore, the first requestor has a special right of access to her insured person's Texas motor vehicle information under section 552.023 of the Government Code, and that information may not be withheld from the first requestor under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We otherwise agree that the Texas motor vehicle information that you have marked must be withheld from both requestors under section 552.130.

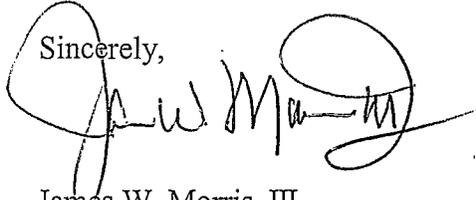
In summary: (1) the submitted crash report must be released to the first requestor pursuant to section 550.065(c)(4) of the Transportation Code and withheld from the second requestor under section 550.065(b); (2) the department may withhold the marked portions of the remaining documents and the photographs that are related to the pending prosecution under section 552.108(a)(1) of the Government Code; and (3) the first requestor has a right of access to the information relating to her insured person's vehicle; otherwise, the marked Texas motor vehicle information must be withheld from both requestors under section 552.130 of the Government Code. The rest of the submitted information must be released to both requestors.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', written in a cursive style. The signature is enclosed within a large, hand-drawn oval.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 340892

Enc: Submitted information

c: Requestors
(w/o enclosures)