



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2009

Mr. Scott A. Kelly  
Interim General Counsel  
Texas A&M University System  
200 Technology Way, Suite 2079  
College Station, Texas 77845-3424

OR2009-06193

Dear Mr. Kelly:

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# 342587.

The Texas A&M University Police Department (the "department") received a request for a specified incident report. You state you will release basic information to the requestor. See Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the department did not comply with section 552.301 of the Government Code in requesting this decision. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. See Gov't Code § 552.301(a), (b). You state that the department received the request on February 18, 2009. However, you did not raise sections 552.103 and 552.108 of the Government Code until March 11, 2009. Therefore, the department failed to raise these exceptions within the period prescribed by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason exists where some other source of law makes the information confidential or where third-party interests are at stake. See Open Records Decision No. 150 at 2 (1977). Because the department has failed to comply with the procedural requirements of the Act, the department has waived sections 552.103 and 552.108. 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 No. 665 at 2 n.5 (2000) (discretionary exceptions generally); 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions); 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason under section 552.302. See Open Records Decision No. 586 at 3 (1991). You inform us that the Brazos County Attorney's Office (the "county attorney") objects to the release of the submitted information. Therefore, we will consider the applicability of section 552.108. We note the submitted documents contain information that is subject to section 552.130 of the Government Code.<sup>1</sup> Because section 552.130 can provide a compelling reason to overcome the presumption of openness, we will also address the applicability of this exception to the submitted information.

The submitted documents include a CRB-3 accident report form completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064. 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 section encompasses information protected by other statutes, including section 550.065 of the Transportation Code. Section 550.065(b) 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 the accident report to a person who provides two or more of the following three pieces of information: (1) date of the accident; (2) specific location of the accident; and (3) name of any person involved in the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the governmental entity with two or more

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

pieces of information specified by the statute. *See id.* In this instance, the requestor has provided the department with all of the information specified under section 550.065(c)(4) of the Transportation Code. Thus, the department must release the submitted accident report in its entirety under this section.

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). The county attorney asserts that the remainder of the submitted information is related to a pending criminal prosecution. Based on this representation, we conclude that section 552.108(a)(1) is generally applicable to the remaining information. *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 a citation. Because a copy of the citation has been given to the individual who was cited, we do not find that release of this information would interfere with the detection, investigation, or prosecution of crime. Therefore, the submitted citation may not be withheld under section 552.108(a)(1). The remaining information may be withheld under section 552.108 of the Government Code.

We note that the citation contains Texas motor vehicle record information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We note, however, that the requestor may be the insurance provider of the individual whose information is at issue. As such, the requestor may have a right of access to this information as the insured’s authorized representative. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear that the requesting insurance company is acting as the individual’s authorized representative. Therefore, we rule conditionally. To the extent the requestor has a right of access under section 552.023 to the Texas motor vehicle record information, which we have marked, the department must release the individual’s information to the requestor. To the extent the requestor does not have a right of access under section 552.023, the department must withhold the information belonging to the individual under section 552.130 of the Government Code.

In summary, with the exception of the CRB-3 accident report form and the citation, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked within

the submitted citation under section 552.130 of the Government Code. However, to the extent the requestor is the authorized representative of the individual, the marked Texas motor vehicle record information must be released to the requestor.

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](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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 342587

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)