



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 25, 2010

Ms. Christina R. Sanchez
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2010-01130

Dear Ms. Sanchez:

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# 368028.

The El Paso County Sheriff's Office (the "sheriff") received a request for police reports, the major accident reports, and photographs pertaining to case number 2009-01214. You state the sheriff will release portions of the responsive accident report and incident/investigation report. You claim the remaining documents are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note Attachment C contains Search Warrant and Return documents filed with the court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under "other law." See Gov't Code § 552.022(a)(17). Although you seek to withhold these documents under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver); *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 Gov't Code § 552.103). As such, sections 552.103 and 552.108 are not "other law" that make information expressly confidential for purposes of section 552.022(a)(17). You also raise section 552.130 of the

Government Code for information in Attachment C, which is "other law" for purposes of section 552.022(a)(17); we will address the public availability of the information subject to section 552.130 in the court-filed documents with the remaining information.

Attachments C and G contain a CR-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). 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 other statutes make confidential. Section 550.065(b) states, except as provided by subsection (c) or (e), accident reports are privileged for the confidential use of certain specified entities. 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 pieces 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. *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 two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the sheriff with two of the three pieces of information listed under section 550.065(c)(4). Accordingly, the requestor in this instance has a statutory right of access to the submitted CR-3 report pursuant to section 550.065(c)(4) of the Transportation Code.

However, you claim portions of this accident report are excepted under sections 552.103, 552.108, and 552.130 of the Government Code. You also marked insurance policy numbers and insurance company names for which we understand you to assert section 552.136 of the Government Code and common-law privacy. However, a statutory right of access generally prevails over the Act's exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Additionally, when a statute directly conflicts with a common-law principle or claim, the statutory provision controls and preempts common law. *Gallagher Headquarters Ranch Dev., Ltd. v. City of San Antonio*, 269 S.W.3d 628, 637 (Tex. App.—San Antonio 2008, pet. filed) (legislature may enact legislation that preempts or supersedes common-law principle); *see Cash Am. Int'l Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (statute abrogates common-law principle only when its express terms or necessary implications clearly indicate Legislature's intent to do so and requires clear repugnance between common law and statutory causes of action), *Collins v. Tex Mall, L.P.*, No. 2-07-370-CV, 2009 WL 2579642, at * 4 (Tex. App.—Fort Worth Aug. 20, 2009, no pet. h.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle), *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Although this office recently issued Open Records Decision No. 684 that acts as a previous determination to all governmental bodies authorizing them to withhold, among other things, Texas driver's license numbers under section 552.130 and insurance policy numbers under section 552.136

without the necessity of requesting an attorney general decision, that decision does not apply to information in a peace officer's accident report completed pursuant to chapter 550 of the Transportation Code. *See* Open Records Decision No. 684 at 8 (2009). Thus, because the requestor in this instance has a statutory right of access to the CR-3 accident report at issue, the sheriff may not withhold this information from the requestor pursuant to common-law privacy, section 552.103, section 552.108, section 552.130, or section 552.136 of the Government Code.

You also raise article 20.02(a) of the Code of Criminal Procedure for portions of the submitted accident report. The applicability of article 20.02 to the information you marked would result in a conflict between this requestor's statutory right of access to the information under section 550.065(c) and confidentiality under article 20.02. *See generally* Gov't Code § 311.026(b) (where general and specific statutes conflict, specific provision typically prevails as exception to general, unless general provision enacted later and clear evidence exists that legislature intended general provision prevail). However, based on the documents provided, the information you seek to withhold was not produced at the direction of the grand jury, but was generated during the sheriff's investigation of the traffic accident. *See* Open Records Decision No. 513 at 3 (1988) (when individual or entity acts at direction of grand jury as its agent, information prepared or collected by agent is not subject to Act; but fact that information collected or prepared by district attorney is submitted to grand jury does not mean information is in grand jury's constructive possession). Additionally, Texas courts have held the types of "proceedings" made confidential by section 20.02 are testimony presented to the grand jury and the deliberations of the grand jury. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, no pet.); *see also Stern v. State*, 869 S.W.2d 614 (Tex. App.—Houston [14th Dist] 1994, no writ) (stating anything that takes place before the bailiffs and grand jurors, including deliberations and testimony, is secret). However, you have not submitted any arguments explaining how the submitted accident report reveals grand jury testimony or deliberations. Therefore, we conclude you have not established the applicability of article 20.02(a) to the information you marked. Consequently, we need not address the potential conflict between this provision and the requestor's statutory right of access under section 550.065(c) of the Transportation Code, and the marked CR-3 accident report must be released in its entirety.

You assert the remaining information in Attachment C is subject to section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You provide a letter from the El Paso County Attorney's Office stating criminal charges are pending related to case number 2009-01214. Based on this representation and our review, we determine release of the remaining information in Attachment 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). Accordingly, the sheriff may withhold the remaining information in Attachment C pursuant to section 552.108(a)(1) of the Government Code.¹

Section 552.101 also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides the following:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate The records are subject to required public disclosure in accordance with [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25. Because neither exception to confidentiality applies to the information in this instance, we agree that the sheriff must withhold the autopsy photographs in Attachment F pursuant to section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Finally, you marked portions of the remaining information in Attachment G under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). The sheriff must withhold the Texas license plate and vehicle identification numbers you highlighted in the incident/investigation report in Attachment G, as well as the information we marked in the Search Warrant and Return documents in Attachment C, under section 552.130 of the Government Code.²

¹As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the sheriff must release the CR-3 accident report we marked in Attachments C and G in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of the marked court-filed documents, the sheriff may withhold the remaining information in Attachment C under section 552.108(a)(1) of the Government Code. The sheriff must withhold the autopsy photographs in Attachment F under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. Finally, the sheriff must withhold the Texas license plate and vehicle identification numbers you highlighted in Attachment G and those we marked in the court-filed documents under section 552.130 of the Government Code. The remaining information in Attachment G must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 368028

Enc. Submitted documents

cc: Requestor
(w/o enclosures)