



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2010

Ms. Evelyn Njuguna
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-14234

Dear Ms. Njuguna:

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# 398938 (PIR # 17617).

The Houston Police Department (the "department") received a request for information relating to a fatal accident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.¹

We first note that the submitted information includes crash reports that were completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential.² *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a

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).

²Section 552.101 of the Government Code excepts from public 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.

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.* In this instance, the requestor has provided the department with two of the three specified items of information. We note that the exceptions to disclosure found in the Act are generally not applicable to information that another statute makes public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).* Therefore, the crash reports we have marked must be released to this requestor in their entirety pursuant to section 550.065(c)(4) of the Transportation Code.

Next, we address your claims under section 552.108 of the Government Code for the remaining information. 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception 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 state that the information submitted as Exhibit 2 is related to an active criminal investigation. Based on your representations, we conclude that section 552.108(a)(1) is generally applicable to Exhibit 2. *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 552.108(a)(2) excepts “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state that the information submitted as Exhibits 3 and 3A is related to a concluded investigation that did not result in a conviction or deferred adjudication. You explain that the case was closed because the allegations of criminal conduct were unfounded. Based on your representations, we conclude that section 552.108(a)(2) is generally applicable to Exhibits 3 and 3A.

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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. Basic information must be released, even if the information does not literally appear on the front page of an offense or arrest report. *See Open Records Decision No. 127 at 3-4 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). The

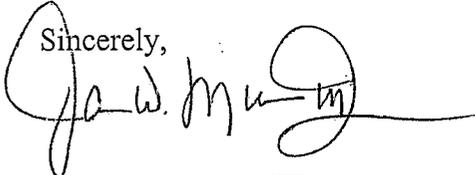
department may withhold the remaining information in Exhibits 2, 3, and 3A under section 552.108.

In summary: (1) the marked crash reports must be released pursuant to section 550.065(c)(4) of the Transportation Code; and (2) the remaining information may be withheld under section 552.108 of the Government Code, except for basic information under section 552.108(c).

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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal flourish extending to the right.

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

JWM/em

Ref: ID# 398938

Enc: Submitted documents

c: Requestor
(w/o enclosures)