



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 15, 2010

Ms. Lizbeth Islas Plaster
Assistant City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2010-17269

Dear Ms. Plaster:

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# 399974.

The Lewisville Police Department (the "department") received a request for information pertaining to a specified accident. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor contends he was not timely notified of the department's request for a ruling from this office as required by section 552.301(d)(2) of the Government Code. *See id.* § 552.301(d) (governmental body must provide requestor with copy of governmental body's written communication to attorney general asking for decision). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. The request submitted by the department indicates the department received the written request for information on August 24, 2010. You inform us city offices were closed on September 6, 2010, in observance of Labor Day. Thus, the department was required to request a ruling from this office and provide the requestor with a copy of its written communication with this office by September 8, 2010. The department requested a decision from our office on September 8, 2010. *See id.* § 552.308(a) (prescribing standards

for timeliness of action by United States or common or contract carrier). Further, the submitted information indicates the department simultaneously sent a copy of the request for a decision to the requestor. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. See Open Records Decision No. 522 at 4 (1990). Based on the submitted information and the department's representations, we find that the department complied with the procedural requirements of section 552.301 in requesting this ruling.

Next, we address the requestor's argument that the department has previously released the requested information to "third party agencies, the [d]istrict [a]ttorney, and the over-served driver and his attorney." The Act does not permit selective disclosure of information to the public. See Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. See Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108). However, a release to another governmental body is not a release to the public. Information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. See Attorney General Opinions JM-590 (1986), H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989), 414 (1984). Additionally, article 38.02 of the Code of Criminal Procedure provides:

A release of information by an attorney representing the state to defense counsel for a purpose relating to the pending or reasonably anticipated prosecution of a criminal case is not considered a voluntary release of information to the public for purposes of Section 552.007, Government Code, and does not waive the right to assert in the future that the information is excepted from required disclosure under Chapter 552, Government Code.

Crim. Proc. Code art. 38.02. The enactment of article 38.02 codifies this office's long-standing interpretation that the disclosure of potentially exculpatory evidence to the defense, as required by *Brady v. Maryland*, 373 U.S. 83 (1963), does not waive the prosecuting governmental body's right to claim exceptions to disclosure under the Act. See Open Records Decision No. 454 (1986). Accordingly, the Act does not require the

department to release the information if it was previously released to the district attorney's office or other governmental body. Furthermore, the disclosure of the information at issue to the defendant and his attorney in the context of criminal litigation is considered an involuntary release that does not constitute selective disclosure for purposes of section 552.007 or waiver of the department's right to claim exceptions to disclosure under the Act. Therefore we will consider the department's claim under section 552.108 of the Government Code.

Next, we note that the submitted information contains CR-3 accident report forms that were completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.062 (accident report). Section 550.065(b) states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 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) 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 department with the requisite information for the CR-3 accident report forms. Although you contend the CR-3 reports are excepted under section 552.108 of the Government Code, we note the exceptions found in the Act generally do not apply to information made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the department must release the CR-3 accident report forms to the requestor in their entirety pursuant to section 550.065(c) of the Transportation Code.

We also note the submitted information includes a document that has been filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court-filed information, which we have marked, under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2, 177 at 3. As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the information we have marked under 552.022(a)(17) of the Government Code may not be withheld under section 552.108. We note that the court-filed information contains information subject to section 552.130 of the Government Code.¹ As section 552.130 constitutes "other law" for the purposes of section 552.022, we will consider this exception

¹The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

for the information subject to 552.022. We will also consider your claim under section 552.108 for the information that is not subject to section 552.022.

Section 552.108(a)(1) 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). Generally, a governmental body claiming section 552.108(a)(1) 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). We note that the submitted information includes a statutory warning and notice of suspension. Because copies of these documents, which we have marked, have been provided to the arrestee, we find that their release will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the department may not withhold these documents under section 552.108(a)(1). You state that the remaining information relates to an open and pending criminal investigation and prosecution. Based upon your representation and our review, we conclude that the release of the remaining information 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.*, 536 S.W.2d 559 (Tex. 1976) (*per curiam*) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the statutory warning, notice of suspension, and basic information, the department may withhold the remaining information under section 552.108(a)(1).

We note that the statutory warning and the notice of suspension, along with the court-filed document, contain information that is subject to section 552.130 of the Government Code. Section 552.130 provides 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). The department must withhold the information we have marked under section 552.130 of the Government Code.²

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

In summary, the department must release the CR-3 accident report forms to the requestor in their entirety pursuant to section 550.065(c) of the Transportation Code. The department must release the court-filed document we have marked under section 552.022(a)(17) of the Government Code. With the exception of the statutory warning, notice of suspension, and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the court-filed document, the statutory warning, and the notice of suspension, the department must withhold the information we have marked under section 552.130 of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 399974

Enc. Submitted documents

cc: Requestor
(w/o enclosures)