



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2011

Ms. Sheri Bryce Dye
Assistant District Attorney
Bexar County District Attorney's Office
300 Dolorosa, 4th Floor
San Antonio, Texas 78205

OR2011-01646

Dear Ms. Dye:

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# 407911.

The Bexar County District Attorney's Office (the "district attorney") received a request for a copy of all records, reports, photographs, witness statements and the complete file pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, the submitted information includes a CR-3 accident report form 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) or subsection (e), accident reports are privileged and confidential. *See 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 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, a 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 district attorney with the date of the accident and the name of a person involved in the accident pursuant to section 550.065(c)(4). Although you seek to withhold the CR-3

accident report under sections 552.103, 552.108, and 552.111, a statutory right of access generally prevails over the Act's exceptions to public disclosure. See Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information statutes expressly make public), 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 exception to disclosure under the Act). Thus, the district attorney must release the marked CR-3 accident report in its entirety under section 550.065(c)(4) of the Transportation Code.

Next, some of the remaining information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

....
(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (a)(17). The remaining information includes a completed case report for assignment number 90953004-02 subject to section 552.022(a)(1) and a magistrate warning subject to section 552.022(a)(17). The district attorney may only withhold the case report if it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. The district attorney may only withhold the magistrate warning if it is confidential under other law. Although you seek to withhold the magistrate warning under sections 552.103, 552.108, and 552.111 of the Government Code, these sections are discretionary exceptions that protect a governmental body's interest and are, therefore, not "other law" for purposes of section 552.022. 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district attorney may not withhold the magistrate warning, which we marked, under sections 552.103, 552.108, or 552.111 of the Government Code. As you raise no further exception to the disclosure of the magistrate warning, it must be

released pursuant to section 552.022(a)(17). Additionally, the district attorney may not withhold the case report subject to section 552.022(a)(1) under section 552.103 or section 552.111 of the Government Code. The attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that “[t]he Texas Rules of Civil Procedure . . . are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” See TEX. R. CIV. P. 2. Thus, because the submitted information relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to the case report and it may not be withheld on that basis. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address your arguments under this exception for the case report. We will also consider your arguments under sections 552.103, 552.108, and 552.111 for the remaining information not subject to section 552.022(a)(1).

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov’t Code § 552.108(a)(4). 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). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney’s “entire litigation file” was “too broad” and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993, orig. proceeding), held that “the decision as to what to include in [the file] necessarily reveals the attorney’s thought processes concerning the prosecution or defense of the case.” *Curry*, 873 S.W.2d at 380. You state the present request is for the entire case file for a specified incident. Based on your representations and upon our review, we conclude section 552.108(a)(4) of the Government Code is applicable.

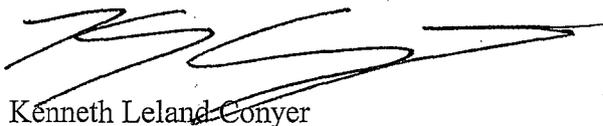
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic information contained in the case report for assignment number 90953004-02, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.¹

In summary, the district attorney must release the marked CR-3 accident report in its entirety under section 550.065(c)(4) of the Transportation Code. The district attorney must release the marked magistrate warning pursuant to section 552.022(a)(17) of the Government Code. With the exception of the basic information contained in the case report for assignment number 90953004-02, the district attorney may withhold the remaining information under section 552.108(a)(4) 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

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

Ref: ID# 407911

Enc. Submitted documents

c: Requestors
(w/o enclosures)