



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 3, 2011

Mr. Michael Bloch  
Assistant District Attorney  
Cameron County District Attorney  
P.O. Box 2299  
Brownsville, Texas 78522

OR2011-03053

Dear Mr. Bloch:

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# 409095.

The Cameron County District Attorney's Office (the "district attorney") received a request for information pertaining to the arrest of a named individual in a specified location on a specified date. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code and privileged under article 39.14 of the Code of Criminal Procedure.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold the submitted information pursuant to article 39.14 of the Code of Criminal Procedure. We note, however, article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. Article 39.14 does not expressly make information confidential for purposes of the Act. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality under section 552.101 must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987)

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<sup>1</sup>Although you cite article 39.12 of the Code of Criminal Procedure for your prosecutorial work-product argument, you quote article 39.14 of the Code of Criminal Procedure. Based on your arguments, we understand you to argue article 39.14 instead of article 39.12.

(statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 575 at 2 (1990) (explicitly stating that discovery privileges are not covered by statutory predecessor to section 552.101). We therefore conclude the district attorney may not withhold any of the submitted information under article 39.14.

Next, we note 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 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 district attorney with the requisite information as specified by the statute. Although you seek to withhold the CR-3 report forms under sections 552.103 and 552.108 of the Government Code, a statute governing the release of specific information prevails over the general exceptions to disclosure found in the Act. Attorney General Opinion DM-146 at 3 (1992); *see also* 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). Therefore, the district attorney must release the CR-3 accident report forms we marked to the requestor pursuant to section 550.065(c)(4).

We also note the submitted information contains documents filed with a court. A court-filed document is subject to section 552.022(a)(17) of the Government Code and must be released unless it is expressly confidential under other law. *See* Gov't Code § 552.022(a)(17). You claim these documents are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary exceptions that protect a governmental body's interests and may be waived. *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), 586 (1991) (governmental body may waive section 552.108). As such, sections 552.103 and 552.108 are not "other law" for purposes of section 552.022(a)(17). Consequently, the district attorney may not withhold the court-filed documents, which we marked, under either section 552.103 or section 552.108. As you have claimed no other exceptions to disclosure for these documents, they must be released.

Section 552.108 of the Government Code provides in 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) reflects 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). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held 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, and we agree, the present request seeks the entirety of the district attorney's criminal file pertaining to the named individual. Thus, based on your representations and our review, we conclude section 552.108(a)(4) is applicable to the remaining information.

We note 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). Section 552.108(c) refers to the basic front-page 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(4).<sup>2</sup>

In summary, the district attorney must release the CR-3 report forms we marked pursuant to section 550.065(c)(4) of the Transportation Code. The district attorney must also release the court-filed documents we marked pursuant to section 552.022(a)(17) of the Government

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

Code. Except for basic information, 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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 409095

Enc. Submitted documents

c: Requestor  
(w/o enclosures)