



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2011

Mr. Robert Almonte
Assistant City Attorney
Office of the City Attorney
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2011-08540

Dear Mr. Almonte:

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# 425644.

The El Paso Police Department (the "department") received a request for eleven categories of information pertaining to a specified accident. You state the department does not possess some of the requested information.¹ You state the department has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you seek to withhold information relating to 9-1-1 callers. In Open Records Letter No. 2003-0708 (2003), this office issued a previous determination that authorizes the department to withhold the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 772.318 of the Health and Safety Code. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)). Therefore, to the extent the information you have marked contains the telephone numbers and addresses of 9-1-1 callers that were furnished by a

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

service supplier established in accordance with chapter 772, the department must withhold any such information under section 772.318 of the Health and Safety Code in accordance with the previous determination issued to the department in Open Records Letter No. 02003-0708.

Next, we note the released information contains a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.062 (accident report). Section 550.065(b) provides except as provided by subsection (c), accident reports are privileged and confidential. 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 provided the department with the information necessary to obtain a copy of the CR-3 accident report form. We note you have redacted vehicle identification numbers from the form. However, the requestor has a statutory right of access to the CR-3 accident report in its entirety pursuant to section 550.065(c) of the Transportation Code. *See* Open Records Decision Nos. 623 at 3(1994) (exceptions in Act inapplicable to information that 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.). Therefore, the department must release the CR-3 accident report form to the requestor in its entirety pursuant to section 550.065(c) of the Transportation Code.

You claim report number 10-315202 is excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report number 10-315202 pertains to a case that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude section 552.108(a)(2) is applicable to this report.

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 basic information, the department may withhold report number 10-315202 under section 552.108(a)(2).

In summary, the department must withhold 9-1-1 callers' telephone numbers and addresses under section 772.318 of the Health and Safety Code pursuant to the previous determination in Open Records Letter No. 2003-0708. The department must release the CR-3 accident report in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of basic information, the department may withhold report number 10-315202 under section 552.108(a)(2) 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/bs

Ref: ID# 425644

Enc. Submitted documents

c: Requestor
(w/o enclosures)