



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2011

Mr. Richard L. Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2011-08620

Dear Mr. Bilbie:

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# 421341.

The Harlingen Police Department (the "department") received a request for information pertaining to a specified incident, including incident reports, video, and names of involved officers and respondents to the scene, as well as a copy of the department's policy regarding pursuit of vehicles.¹ You state the department will release some of the requested information, including the vehicle pursuit policy. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the

¹You claim a portion of the request requires the department to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require a governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). We assume the department has made a good faith effort to do so.

written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state the department received the request for information on April 4, 2011. You inform us the department was closed for business on April 22, 2011. Accordingly, the department's fifteen-business-day deadline was April 26, 2011. The envelope in which the department originally submitted a copy of the requested information bears a postmark of April 25, 2011. The submitted information reflects, however, that the original submission was returned to the department for insufficient postage and the department again mailed the requested information to this office in an envelope bearing a postmark of May 5, 2011. Section 552.308 of the Government Code provides when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail "with postage . . . prepaid" and the postmark date is within the required time period. *See id.* § 552.308. Because the department did not submit all the information required by section 552.301(e) within the required time period, we find the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You claim an exception to disclosure under sections 552.103 and 552.108 of the Government Code, which are discretionary exceptions that 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Because you failed to comply with section 552.301, you have waived your claims under sections 552.103 and 552.108. However, the interests under sections 552.103 and 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us that the Cameron County District Attorney's Office (the "district attorney") asserts the information at issue should be withheld under sections 552.103 and 552.108 of the Government Code. Therefore, we will consider whether the information at issue may be withheld on behalf of the district attorney under sections 552.103 and 552.108. Furthermore, because sections 552.101 and 552.130 of the

Government Code can provide compelling reasons for non-disclosure, we will consider the applicability of these exceptions to the submitted information.²

Next, we note the submitted documents include 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) 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) the date of the accident; (2) the name of any person involved in the accident; and (3) the 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 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 pieces of information. Although you seek to withhold this information under section 552.101, and the district attorney seeks to withhold this information under sections 552.103 and 552.108 of the Government Code, as a general rule, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* 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). Accordingly, the department must release the submitted CR-3 accident report in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

We also note the submitted information includes a court-filed document. 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). We have marked the document that is subject to section 552.022(a)(17). Although the district attorney seeks to withhold this document under sections 552.103 and 552.108 of the Government Code, as noted above, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code. § 552.007; ORD 665 at 2 n.5 (discretionary exceptions generally). As such, sections 552.103 and 552.108 are not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the marked court document may not be withheld under section 552.103 or section 552.108. Further, although we understand you to raise section 552.101 of the Government Code in conjunction with common-law privacy for the court-filed document, information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Thus, the court-filed

²The Office of the Attorney General will raise a mandatory exception like 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).

document we have marked may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure of the court-filed document, it must be released.

We now address section 552.108 of the Government Code for the information that is not subject to section 552.022 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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 must reasonably explain how and why 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You inform this office the district attorney objects to release of the information at issue because release would interfere with a pending criminal investigation and prosecution. Based upon this representation, we conclude the release of the information at issue 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note, and you acknowledge, that 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*. *See* 531 S.W.2d at 186-88. The department must release basic information, 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*). Except for basic information, which you have marked for release, the department may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code.³

Finally, we note the information you have marked for release contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle title or registration issued by an agency of

³As our ruling under section 552.108 is dispositive, we need not address the remaining arguments against disclosure, except to note that basic information generally may not be withheld from public disclosure under section 552.103. *Open Records Decision No. 597 (1991)*.

this state[.]” Gov’t Code § 552.130(a)(2). The department must withhold the Texas motor vehicle record information we have marked under section 552.130.⁴

In summary, the department must release the marked CR-3 accident report in its entirety pursuant to section 550.065(c)(4) of the Transportation Code and the marked court-filed document pursuant to section 552.022(a)(17) of the Government Code. With the exception of the information the department has marked for release, the department may withhold the remaining submitted information under section 552.108 of the Government Code. In the information it has marked for release, the department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bs

Ref: ID# 421341

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We 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 license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.