



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2011

Mr. Sam Aguirre
Assistant City Attorney
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

OR2011-15141

Dear Mr. Aguirre:

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# 433553.

The San Marcos Police Department (the "department") received a request for nine categories of information related to case number 11-51152. You claim the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information includes a crash report 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.¹ *See id.* § 550.065(b). Section 550.065(c)(4) provides for release of an accident report 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, 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

¹Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

two of the three specified items of information. Although you seek to withhold the crash report under section 552.108 of the Government Code, we note 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). Therefore, the crash report we have marked must be released to this requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

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). 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).

We note the information at issue includes statutory warning and notice of suspension forms, which we have marked. Because copies of those documents are provided to the person who is the subject of the warning and the notice, we find release of the statutory warning and notice of suspension forms will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the statutory warning and notice of suspension forms may not be withheld under section 552.108.

You state release of the remaining information would interfere with the investigation and prosecution of an open criminal case. Based on your representation, we conclude 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) (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 also 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*. *See* 531 S.W.2d at 186-88. The department must release basic offense and arrest 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 and the statutory warning and notice of suspension forms, the department may withhold the remaining information under section 552.108(a)(1).

We note some of the information in the statutory warning and notice of suspension forms is subject to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state

or another state or country is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)). The department must withhold the driver's license number we have marked in the statutory warning and notice of suspension forms under section 552.130 of the Government Code.

In summary, the department must release the crash report we have marked pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of the statutory warning and notice of suspension forms, and the basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the statutory warning and notice of suspension forms, the department must withhold the driver's license number 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 433553

Enc. Submitted documents

c: Requestor
(w/o enclosures)