



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2011

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2011-15439

Dear Mr. Weir:

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# 433772 (COSA File Nos. W002588, W002657).

The San Antonio Police Department (the "department") received two requests for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us in a facsimile dated October 12, 2011, that you withdraw your request for an opinion regarding the first request for information pertaining to the specified incident. You state the first requestor has narrowed his request for information, and you will release the photographs and diagrams subject to the more narrowly tailored request to him. As such, we note that the Act does not permit the selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, the department may not withhold the information previously released to the first requestor unless its release is expressly prohibited by law or the information is confidential by law. Although you raise section 552.108 of the Government Code for the

photographs and diagrams previously released, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the department may not now withhold the photographs and diagrams previously released to the first requestor under section 552.108 of the Government Code. However, we note the previously released information contains motor vehicle record information protected by section 552.130 of the Government Code. Because section 552.130 makes information confidential by law, we will consider the applicability of this exception to the previously released information.¹

Next, we note the submitted information includes a search warrant that has been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless confidential under "other law." *See* Gov't Code § 552.022(a)(17); *see also* *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Although you seek to withhold the search warrant under section 552.108 of the Government Code, as previously noted, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not "other law" that makes information expressly confidential for purposes of section 552.022(a)(17). Therefore, the search warrant, which we have marked, may not be withheld under section 552.108. We note, however, that the search warrant contains motor vehicle record information protected by section 552.130 of the Government Code. Because section 552.130 is "other law" for purposes of section 552.022(a)(17), we will consider the applicability of this exception to the search warrant.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]" 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). Therefore, the department must withhold the motor vehicle record information, which we have marked in the search warrant and we have indicated in the previously released photographs, under section 552.130. As you raise no further exceptions to disclosure, the department must release the remaining information in the search warrant and the previously released photographs and diagrams.

Next, we note the remaining information at issue contains a CR-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.062

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(accident report). Section 550.065(b) states that 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 has provided the department with the requisite information for the CR-3 accident report. Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, we note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* 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 department must release the CR-3 accident report in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

We will now address your claim under section 552.108 of the Government Code for the remaining information at issue. Section 552.108(a)(1) 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 claiming section 552.108(a)(1) must reasonably explain how and why the 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). You state that the remaining information at issue relates to a pending criminal investigation. Based on your representations and our review, we conclude that section 552.108(a)(1) is applicable to the remaining information at issue. *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, 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*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, the department may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code.

In summary, with the exception of the motor vehicle record information we have marked in the search warrant and indicated in the previously released photographs under section 552.130 of the Government Code, the department must release the search warrant and

the previously released photographs and diagrams to the instant requestor. The department must release the CR-3 accident report in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.² With the exception of the basic information, the department may withhold the remaining information at issue under section 552.108(a)(1) 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 433772

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that, because this requestor has a special right of access to the CR-3 accident report being released, the department must again ask this office for a decision if it receives another request for this information from a different requestor.