



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2011

Mr. R. Brooks Moore  
Managing Counsel  
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OR2011-16803

Dear Mr. Moore:

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# 436393 (TAMU 11-506).

Texas A&M University (the “university”) received a request for a specified police report, including associated photographs taken by a named officer. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note the submitted information includes a crash report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 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 section encompasses information other statutes make confidential. 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. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the 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 university with two of the three specified items of information. Although you seek 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 university must release the submitted CR-3 crash report in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

Next, we address your claim under section 552.108 of the Government Code for the remaining information. 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 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). You have provided a letter from the Brazos County Attorney (the “county attorney”) stating release of the remaining information would interfere with a pending criminal prosecution. Based on this representation, we conclude section 552.108(a)(1) is generally applicable to the remaining information. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note, however, the remaining information includes a statutory warning. Because a copy of this document is provided to the person who is the subject of the warning, we find release of the statutory warning will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the university may not withhold the statutory warning, which we have marked, under section 552.108(a)(1).

As you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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 university must release basic offense and arrest information, including a detailed description of the offense, 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 the

basic information and the statutory warning, the university may withhold the remaining information under section 552.108(a)(1).<sup>1</sup>

We now address your claim under section 552.103 of the Government Code for the statutory warning. Section 552.103 provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

You represent to this office the statutory warning relates to a criminal prosecution that was pending when the university received this request for information. We note, however, the university is not a party to the pending criminal litigation. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990). In such a situation, we require an affirmative

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining argument against disclosure except to note section 552.103 does not generally except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. You have submitted such a representation from the county attorney. The letter from county attorney states “[it] represents the State of Texas in the pending criminal litigation and [the statutory warning] relate[s] to that litigation because [it is a part of] the record of the events which resulted in the arrest of the defendant.” Based on this representation and our review, we find you have demonstrated litigation was reasonably anticipated when the university received the request for information. We also find the university and the county attorney have established the information at issue is related to the anticipated litigation for purposes of section 552.103.

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. If the opposing party has seen or had access to information relating to pending or anticipated litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, because the statutory warning was issued to the defendant in the pending prosecution, the opposing party in the litigation has already seen the warning. We therefore conclude the statutory warning may not be withheld under section 552.103 of the Government Code.

We note the statutory warning contains a driver’s license number. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country.<sup>2</sup> *See* 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). The university must withhold the driver’s license number we have marked under section 552.130 of the Government Code.

In summary: (1) the marked crash report must be released to this requestor pursuant to section 550.065(c)(4) of the Transportation Code; (2) except for the marked statutory warning and the basic information that must be released under section 552.108(c), the university may withhold the remaining information under section 552.108(a)(1) of the Government Code; and (3) the marked driver’s license number must be withheld under section 552.130 of the Government Code.<sup>3</sup>

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note basic information includes an arrested person’s social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov’t Code § 552.147(b).

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,



Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/em

Ref: ID# 436393

Enc. Submitted documents

c: Requestor  
(w/o enclosures)