



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2011

Ms. Erin A. Higginbotham
Denton, Navarro, Rocha & Bernal
2500 West William Cannon, Suite 609
Austin, Texas 78745

OR2011-17639

Dear Ms. Higginbotham:

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# 437394.

The Copperas Cove Police Department (the "department"), which you represent, received a request for all information pertaining to a specified incident and all crash reports occurring at a specified intersection during a specified period of time. You state you are making some of the requested information available to the requestor. You also state you are withholding information under sections 552.130 and 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim that the submitted information is excepted

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and credit card and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended sections 552.130 and 552.136 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) and subsection 552.136(b), respectively, without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)), § 27 (to be codified at Gov't Code § 22 552.136(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e) and section 552.136(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)), § 27 (to be codified at Gov't Code § 22 552.136(e)). Thus, the statutory amendments to sections 552.130 and 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130 and subsection 552.136(a) in accordance with section 552.136, not Open Records Decision No. 684.

from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information appears to be the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-16824 (2011). In that ruling, we concluded with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. We are unaware of any change in the law, facts, and circumstances on which the previous ruling is based. Therefore, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the department may continue to rely on Open Records Letter No. 2011-16824 as a previous determination and release the identical information in accordance with that ruling. *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will address the raised exceptions.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses chapter 550 of the Transportation Code. We note the submitted information includes CR-3 accident report forms that were 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 provides, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See id.* § 550.065. Section 550.065(c)(4) provides for the release of accident reports 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 not provided the department with two of the required pieces of information for the submitted CR-3 forms. Thus, the department must withhold the submitted CR-3 forms, which we have marked, under section 552.101 in conjunction with section 550.065(b).

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). You state, and have submitted a letter from the department chief confirming, the remaining information pertains to a pending criminal investigation. Based on your representation and our review, we conclude 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). Thus, section 552.108(a)(1) is generally applicable to the information at issue.

However, we note, and you acknowledge, 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 186-7; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code, credit card information encompassed by section 552.136 of the Government Code, or dates of birth. *See* ORD 127 at 3-4. We also note that the department must release a sufficient portion of the narrative to encompass a detailed description of the offense. Thus, with the exception of basic information, including a sufficient portion of the narrative to encompass a detailed description of the offense, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the department may continue to rely on Open Records Letter No. 2011-16824 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must withhold the marked CR-3 forms under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of basic information, the department may withhold the remaining information 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,

²As our ruling is dispositive, we need not address your remaining arguments for this information.

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,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a large, stylized flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 437394

Enc. Submitted documents

c: Requestor
(w/o enclosures)