



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2011

Mr. B. Chase Griffith
City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-17999

Dear Mr. Griffith:

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# 438526 (McKinney ORR#'s 10-4364 and 10-4375).

The McKinney Police Department (the "department"), which you represent, received two requests from the same requestor for incident report number 11-005989, as well as records related to three named individuals. You claim that 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute.¹ Gov't Code § 552.101. Section 552.101 encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See* Transp. Code § 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

¹The 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).

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. The submitted information contains a crash report completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). In this instance, the requestor has not provided the department with two of the three specified items of information. Therefore, the department must withhold the submitted crash report pursuant to section 550.065(b) 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). You state the release of incident report number 11-005989 would interfere with a pending criminal investigation. Based on your representation, we conclude section 552.108(a)(1) is applicable incident report number 11-005989. *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).

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state incident report numbers 10-006951, 10-000431, 09-032141, 06-001118, 05-031097, 05-006997, 05-000364, 04-041881, and 03-023017 are related to concluded investigations that did not result in convictions or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to these reports.

We note 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 offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, except for basic information the department may withhold incident report numbers 11-005989, 10-006951, 10-000431, 09-032141, 06-001118, 05-031097, 05-006997, 05-000364, 04-041881, and 03-023017 under section 552.108 of the Government Code.

In summary, the department must withhold the submitted crash report pursuant to section 550.065(b) of the Transportation Code. With the exception of basic information, the department may withhold incident report numbers 11-005989, 10-006951, 10-000431,

09-032141, 06-001118, 05-031097, 05-006997, 05-000364, 04-041881, and 03-023017, under section 552.108 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 438526

Enc. Submitted documents

c: Requestor
(w/o enclosures)