



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2012

Ms. Susan Fillion
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2012-00859

Dear Ms. Fillion:

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# 442620 (C. A. File No. 11PIA0463).

The Harris County Constable, Precinct Five (the "constable"), received a request for a named former deputy's personnel file. 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.

We first note the submitted information includes court documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Thus, the court documents we have marked are subject to disclosure under section 552.022(a)(17). Although you seek to withhold the court documents under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the marked court documents may not be withheld under section 552.108 of the Government Code. We note, however, that some of the information subject to section 552.022 contains motor vehicle record

information subject to section 552.130 of the Government Code.¹ As this exception can make information confidential for purposes of section 552.022, we will address its applicability.

You have submitted an ST-3 accident report form completed pursuant to chapter 550 of the Transportation Code. Section 552.101 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 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. Section 550.065(c)(4) provides for the release of crash reports to a person who provides two of the following three pieces 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. Transp. Code § 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 any person who provides the agency with two or more pieces of information specified by the statute. In this case, the requestor has not provided the constable with two of the three pieces of information. Thus, the constable must withhold the submitted ST-3 accident report form we have marked under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.²

Section 552.101 of the Government Code also encompasses section 58.007(c) of the Family Code, which provides as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

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

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007 makes confidential juvenile law enforcement records relating to conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* §§ 51.02(2) (defining “child” for purposes of section 58.007 as a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct), 51.03(b)(1) (defining “conduct indicating a need for supervision” to include misdemeanor violations of law punishable by fine only or violations of penal ordinances of any political subdivision of this state). A portion of the remaining information not subject to section 552.022 pertains to juveniles’ curfew violations that occurred after September 1, 1997, and for which the juveniles were issued citations. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Thus, we find that the information we have marked is confidential under section 58.007(c) of the Government Code and must be withheld in its entirety under section 552.101 of the Government Code.³

Section 552.108 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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. You state, and provide documentation demonstrating, that the remaining information not subject to section 552.022 of the Government Code is related to a pending criminal investigation and prosecution by the Fulshear Police Department and Fort Bend County District Attorney’s Office. Based on these representations and our review of the remaining information not subject to section 552.022 of the Government Code, we conclude that section 552.108(a)(1) is applicable to this 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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is generally applicable to the remaining information not subject to section 552.022.

We note the remaining information not subject to section 552.022 includes citations, statutory warnings, and notices of suspension. Because copies of those documents are provided to the person who is the subject of the citations, the warnings, and the notices, we find release of the these documents will not interfere with the detection, investigation, or

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the constable may not withhold the citations, statutory warnings, and notices of suspension, which we have marked for release, under section 552.108.

We also 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; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Except for basic information, the citations, the statutory warnings, and the notices of suspension, the constable may withhold the remaining information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.

Lastly, we note the court documents subject to section 552.022 of the Government Code, the citations, the statutory warnings, and the notices of suspension contain motor vehicle record information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. *See* Gov't Code § 552.130(a)(1)-(2). The constable must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, except for the motor vehicle record information we have marked, which the constable must withhold under section 552.130 of the Government Code, the constable must release the court documents we have marked under section 552.022(a)(17) of the Government Code. The constable must withhold the submitted ST-3 accident report form we have marked under section 552.101 in conjunction with section 550.065(b) of the Transportation Code. The constable must withhold the information we have marked under section 552.101 of the Government Code in conjunction with 58.007(c) of the Family Code. Except for the citations, statutory warnings, notices of suspension, and basic information, the constable may withhold the remaining information under section 552.108(a)(1) of the Government Code. The constable must withhold the motor vehicle record information we have marked in the citations, the statutory warnings, and the notices of suspension under section 552.130 of the Government Code and release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Sean Nottingham". The signature is fluid and cursive, with the first name "Sean" and last name "Nottingham" clearly distinguishable.

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 442620

Enc. Submitted documents

c: Requestor
(w/o enclosures)