



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2012

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

OR2012-02876

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#447716 (City of San Antonio # W004785).

The City of San Antonio (the "city") received a request for police records related to a specific incident. 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.

Initially, we must address the city's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The city received the request for information on December 10, 2011. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Thus, the city was required to request a decision from this office by January 2, 2012. However, the city submitted the request for a decision on January 4, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city failed to comply with the requirements of section 552.301.

A governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exception at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You claim an exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception that may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). The Bexar County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the information at issue. Therefore, we will determine whether the city may withhold the submitted information on behalf of the district attorney under section 552.108.

We note you have submitted a CR-3 crash report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). 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 accident 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 a 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 city with two of the three pieces of information. Thus, you must withhold the CR-3 crash report under section 552.101 in conjunction with section 550.065(b).

We note the submitted information contains a search warrant that has been filed with a court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under "other law." *See* Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this 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), 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). Thus, the city may not withhold the submitted search warrant under section 552.108(a)(1) of the Government Code.

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 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). The district attorney states the information at issue relates to an ongoing criminal investigation. Based upon this representation and our review, we conclude section 552.108(a)(1) is generally applicable in this instance. *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, the information at issue includes a DIC-24 statutory warning and a DIC-25 notice of suspension. Copies of these forms have been provided to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108.

Additionally, 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 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the DIC-24 and DIC-25 forms and basic information, the city may withhold the remaining information at issue under section 552.108(a)(1).

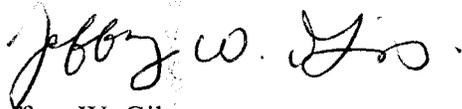
We note the search warrant and DIC-24 and DIC-25 forms contain the arrestee’s driver’s license number. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license, title, or registration, issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)-(2). The city must withhold the arrestee’s driver’s license number, which we have marked, under section 552.130.

In summary, the city must withhold the submitted CR-3 crash report pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of the search warrant, DIC-24 and DIC-25 forms, and basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the search warrant and DIC-24 and DIC-25 forms, the city must withhold the arrestee’s driver’s license number under section 552.130 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/som

Ref: ID# 447716

Enc. Submitted documents

c: Requestor
(w/o enclosures)