



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2012

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2012-06015

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# 451881 (COSA File No. W005820).

The San Antonio Police Department (the "department") received a request for thirteen categories of information pertaining to a specified incident and any complaints against a named police officer. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information. We have also considered comments received from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

We first note you have not submitted any information responsive to the portion of the request seeking complaints against the named officer. To the extent information responsive to this part of the request existed on the date the department received the request, we assume you have released it. *See Open Records Decision No. 664 (2000)* (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such records, you must do so at this time. *See Gov't Code §§ 552.301(a), .302.*

We next address the requestor's contention the city has previously released a portion of the requested information to another member of the public. The Act does not permit selective

disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). *But see* *Cornyn v. City of Garland*, 994 S.W.2d 258, 265 (Tex. App.—Austin 1999, no pet.) (alleged prior disclosure of information in course of discovery did not foreclose possibility of raising litigation exception in response to subsequent request); Open Records Decision No. 579 (1990) (exchange of information among litigants in “informal” discovery is not “voluntary” release of information for purposes of statutory predecessor). Although you raise section 552.108 of the Government Code, that 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, if the department has previously voluntarily released any of the information at issue, the department has waived its claim under section 552.108 of the Government Code for that information and may not withhold it now on that basis. In that event, the department must release to the requestor any information that has previously been voluntarily released to a member of the public.

We next note the submitted information contains a CR-3 crash report form completed pursuant to chapter 550 of the Transportation Code. Section 550.065(b) provides that, except as provided by subsection (c) or (e), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) of the Transportation Code, however, requires the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has provided two of the three requisite pieces of information specified by the statute. Although you seek to withhold this information under section 552.108 of the Government Code, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* 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). Therefore, the department must release the submitted CR-3 report, which we have marked, to the requestor pursuant to section 550.065(c)(4) 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 release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply

to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the requested information pertains to a pending criminal investigation. Based on your representation and our review of the information, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code generally applies to the remaining information.

We note, however, the information at issue includes a DIC-24 statutory warning and a DIC-25 notice of suspension. The department provided copies of these forms 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. In addition, 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. Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of the DIC-24 and DIC-25 forms and basic information, the department may withhold the remaining information under section 552.108(a)(1).

In summary, the department must release to the requestor any of the requested information that the department has previously voluntarily released to a member of the public. The department must release the CR-3 accident report form we marked under section 550.065(c)(4) of the Transportation Code. With the exception of the DIC-24 and DIC-25 forms and basic information, which must also be released, the department may withhold the remaining information under section 552.108(a)(1).¹

¹We note the requestor has a right of access under section 552.023 of the Government Code to his client's driver's license number found in the DIC-24 and DIC-25 forms. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person or person's agent asks governmental body for information concerning the person). However, should the department receive another request for this information from another requestor, we note section 552.130 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3), including a driver's license number. *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

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 cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 451881

Enc. Submitted documents

c: Requestor
(w/o enclosures)