



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2012

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

OR2012-11763

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# 465160 (COSA File No. W008404).

The City of San Antonio (the "city") received a request for the police investigation file related to a fatal traffic accident. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note some of the submitted information was created after the date of the city's receipt of the present request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information.¹ Thus, the information we have marked that was created after the city received the request is not responsive to the request. This decision does not address the public availability of that information, which the city need not release in response to the request.

We also note the submitted information includes a crash report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident

¹*See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or (e), accident reports are privileged and confidential.² *See id.* § 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 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.* We note the exceptions to disclosure found in the Act are generally not applicable to information another statute makes public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). In this instance, the requestor has provided the city with two of the three specified items of information. Therefore, the city must release the submitted crash report to this requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

The submitted information also includes court documents, which we have marked. 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 marked court documents 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 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 Gov’t Code § 552.108 subject to waiver). As such, section 552.108 does not make information encompassed by section 552.022(a)(17) confidential. Therefore, the city may not withhold the court documents under section 552.108.

Next, we address your claim under section 552.108 of the Government Code for the remaining information at issue. 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 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 release of the remaining information would interfere with an open criminal case. Based on your representation, we conclude section 552.108(a)(1) is generally applicable to the remaining information. *See Houston Chronicle Publ’g Co. v. City of*

²Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential.

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).

We note 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). 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*). The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. Except for basic information and the court documents, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

Lastly, we note the court documents contain motor vehicle information. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country.³ See Gov’t Code § 552.130(a)(2). The city must withhold the motor vehicle information we have marked in the court documents under section 552.130.

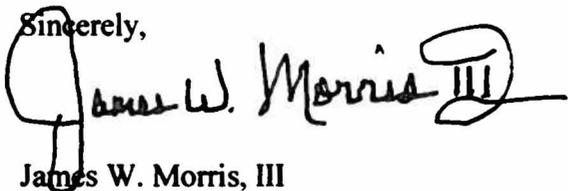
In summary, the city (1) must release the crash report in its entirety pursuant to section 550.065(c)(4) of the Transportation Code; (2) may withhold the remaining information under section 552.108(a)(1) of the Government Code, except for basic information under section 552.108(c) and the marked court documents; (3) must withhold the marked motor vehicle information in the court documents under section 552.130 of the Government Code; and (4) must release basic information and the remaining information in the court documents.

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.

³This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Sincerely,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J" and a prominent "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 465160

Enc: Submitted information

c: Requestor
(w/o enclosures)