



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2012

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
5805 North Lamar Boulevard, Box 4087
Austin, Texas 78773-0001

OR2012-17690

Dear Ms. Cost:

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# 474434 (PIR# 12-3417).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified 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 submitted information.

We note some of the submitted documents fall within the scope of section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code for this information, this is a discretionary exception to disclosure that may be waived 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), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). As such, section 552.108 does not make information confidential for the purposes of section 552.022(a), and the department may not withhold the information subject to section 552.022(a)(17), which we have marked, on that basis. However, we note portions of these records are subject to section 552.130, which makes information confidential under

the Act.¹ Therefore, we will address the applicability of section 552.130 to the information subject to section 552.022(a).

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(2). Therefore, the department must withhold the information we have marked in the court documents under section 552.130 of the Government Code.

We next address your claim under section 552.108 of the Government Code for the information not subject to section 552.022. Section 552.108 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[.]” *Id.* § 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 information at issue pertains to a pending criminal investigation. Based on your representation and our review of the information, we find release of the information at issue 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).

We note, however, 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 basic information, which you state has been released, the department may withhold the remaining information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.

In summary, the department must release the information we marked under section 552.022(a)(17) of the Government Code. In releasing that information, the department must withhold the information we marked under section 552.130 of the

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See Open Records Decision Nos. 481* (1987), *480* (1987), *470* (1987).

Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tch

Ref: ID# 474434

c. Submitted documents

c: Requestor
(w/o enclosures)

²We note that basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).