



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2013

Mr. Richard A. McCracken
Evans, Daniel, Moore, Evans & Lazarus
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2013-10990

Dear Mr. McCracken:

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# 496181 (PIR# 13-248).

The Watauga Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You state the department has no information responsive to parts of this request.¹ You further state the department has made some responsive information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a CR-3 accident report form. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or subsection (e), accident reports are privileged and for the confidential use of certain specified entities. Transp. Code § 550.065(b). The submitted CR-3 crash report was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). 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. *Id.* § 550.065(c)(4). Under this provision, a governmental entity

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.*

In this instance, the requestor has provided the department with the requisite information for the CR-3 accident report. Although the department seeks to withhold this information under section 552.108 of the Government Code, as a general rule, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* 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). Accordingly, the department must release the accident report in its entirety to this requestor pursuant to section 550.065 of the Transportation Code.

We also note the submitted information includes a court-filed document. 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). We have marked the document that is subject to section 552.022(a)(17). Although the department seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *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 does not make information confidential for purposes of section 552.022(a)(17). Therefore, the court document may not be withheld under section 552.108 of the Government Code but must instead be released pursuant to section 552.022(a)(17) of the Government Code.

We now address section 552.108 of the Government Code for the remaining information. Section 552.108(a) 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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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).

We note, however, the information at issue includes a statutory warning, form DIC-24, and a notice of suspension, form DIC-25. Because copies of those forms were provided to the person who is the subject of the warning and the notice, we find release of the statutory warning and notice of suspension will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the department may

not withhold the statutory warning or notice of suspension under section 552.108 of the Government Code.

You state release of the remaining information would interfere with a pending criminal case. Based on your representation, we find release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Except for basic information, the statutory warning, and the notice of suspension, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

Lastly, we note the statutory warning and notice of suspension contain the arrested person’s driver’s license number and a copy of his driver’s license. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country. *See* Gov’t Code § 552.130(a)(1). The department must withhold the information we have marked in the statutory warning and the notice of suspension under section 552.130 of the Government Code.²

In summary, the department must release the marked CR-3 accident report in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. The department also must release the marked court document pursuant to section 552.022(a)(17). With the exception of the information we have marked under section 552.130 of the Government Code, which must be withheld, the department must release the marked DIC-24 and DIC-25 forms. With the exception of basic information, which also must be released, the department may withhold the remaining information under section 552.108(a)(1) 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.

²As our ruling is dispositive, we do not address the remaining claims.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 496181

Enc. Submitted documents

c: Requestor
(w/o enclosures)