



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 27, 2016

Ms. Andrea D. Russell  
Counsel for the City of Benbrook  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2016-02048

Dear Ms. Russell:

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# 595701.

The City of Benbrook (the "city"), which you represent, received a request for twenty-one categories of information pertaining to a specified automobile accident. You state you will redact information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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 information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of

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<sup>1</sup>Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision. *See* ORD 684.

\$1,000 or more. Transp. Code §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). Transp. Code § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the requestor is not a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b), and the city must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the city to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the requestor has a right of access to the redacted accident report. Although the city asserts section 552.108 of the Government Code to withhold the information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.,* 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 exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, the requestor's statutory access under section 550.065(c-1) prevails and the city may not withhold the information at issue under section 552.108 of the Government Code. Thus, the city must release the redacted accident report to the requestor pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.108 of the Government Code provides, in part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1). Sections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, sections 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending investigation and prosecution. However, you also state the submitted information relates to “the detection, investigation or prosecution of crime which resulted in an outcome other than conviction or deferred adjudication.” Based on these conflicting representations, we are unable to determine if the submitted information relates to an ongoing criminal case or a closed case that did not result in conviction or deferred adjudication. Further we find you have failed to demonstrate release of the submitted information would interfere with law enforcement and crime prevention. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1), 552.108(a)(2), or 552.108(b)(1) to the submitted information. Therefore, no portion of the submitted information may be withheld under section 552.108 of the Government Code.

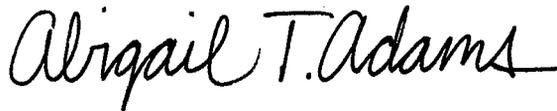
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information we have marked and indicated in the remaining information under section 552.130 of the Government Code. Additionally, you state, and we agree, the submitted video recordings contain motor vehicle record information subject to section 552.130. You also state the city lacks the technological capability to redact the motor vehicle record information from the recordings. Based on this representation, we conclude the city must withhold the recordings in their entirety under section 552.130 of the Government Code. *See Open Records Decision No. 364 (1983).*

In summary, the city must withhold the submitted accident report from the requestor pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, but the city must release the redacted accident report to the requestor pursuant to section 550.065(c-1) of the Transportation Code. The city must withhold the submitted video recordings in their entirety and the information we have marked and indicated under section 552.130 of the Government Code. The city must release the remaining information to the 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/akg

Ref: ID# 595701

Enc. Submitted documents

c: Requestor  
(w/o enclosures)