



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2015

Ms. Myrna S. Reingold
Legal Department
Galveston County
722 Moody Street, Fifth Floor
Galveston, Texas 77550

OR2015-13540

Dear Ms. Reingold:

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# 570226.

The Galveston County Criminal District Attorney's Office (the "district attorney's office") received six requests for information pertaining to a specified incident.¹ The district attorney's office states it has released some information, withholding motor vehicle record information under section 552.130(c) of the Government Code.² The district attorney's

¹The district attorney's office states it sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

office states some information does not exist.³ The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.111, 552.130, and 552.147 of the Government Code, and privileged under Texas Rule of Evidence 503, Texas Rule of Civil Procedure 192.5, and article 39.14 of the Code of Criminal Procedure. We have considered the district attorney's office's arguments and reviewed the submitted information.

Initially, the district attorney's office seeks to withhold the submitted information pursuant to article 39.14 of the Code of Criminal Procedure. We note, however, article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. *See* Crim. Proc. Code art. 39.14. Article 39.14 does not expressly make information confidential for purposes of the Act. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality under section 552.101 must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 575 at 2 (1990) (explicitly stating discovery privileges are not covered by statutory predecessor to section 552.101). Therefore, we conclude the district attorney's office may not withhold any of the submitted information under article 39.14 of the Code of Criminal Procedure.

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. Act of June 1, 2015, 84th Leg., R.S., H.B. 2633, § 1 (to be codified at 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 \$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). Act of June 1, 2015, 84th Leg., R.S., H.B. 2633, § 1 (to be codified at 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).

³The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Here, the requestor is a person listed under section 550.065(c). Although the district attorney's office asserts section 552.108 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) prevails and the district attorney's office may not withhold the information under section 552.108 of the Government Code. Thus, the district attorney's office must release the accident report to the requestor pursuant to section 550.065(c).

Section 552.108(a)(2) 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 . . . 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[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108(a)(2) must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). The district attorney's office states the remaining information it marked pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the district attorney's office may withhold the remaining information it marked under section 552.108(a)(2) of the Government Code.⁴

In summary, the district attorney's office must release the accident report to the requestor pursuant to section 550.065(c). With the exception of basic information, which must be released, the district attorney's office may withhold the remaining information it marked under section 552.108(a)(2) of the Government Code.

⁴As our ruling is dispositive, we need not address the district attorney's office's remaining arguments against disclosure.

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, 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 570226

Enc. Submitted documents

c: Requestor
(w/o enclosures)