



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2017

Mr. Evaristo Garcia, Jr.
Assistant City Attorney
City of McAllen
P. O. Box 220
McAllen, Texas 78505-0220

OR2017-01588

Dear Mr. Garcia:

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# 643168.

The City of McAllen (the "city") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception 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."¹ 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 \$1,000 or more. *Id.* §§ 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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). *Id.* § 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).

The submitted information includes CR-3 crash reports. Here, the requestor is a person listed under section 550.065(c). Although the city asserts section 552.103 to withhold the submitted 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 552.103 is a general exception under the Act, the requestor's statutory access under section 550.065(c) prevails and the city may not withhold the information under section 552.103 of the Government Code. Thus, the city must release the CR-3 crash reports to the requestor pursuant to section 550.065(c) of the Transportation Code.

Next, we note the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The remaining information pertains to a completed investigation that is subject to section 552.022(a)(1). The city must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(1) under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 564 (1990). Therefore, the information subject to section 552.022 may not be withheld under section 552.103. However, we note portions of the information at issue are subject to section 552.130, which makes information confidential under the Act. Therefore, we will address the applicability of this section to the remaining information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal


identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we marked and any discernible motor vehicle record information in the submitted video recordings under section 552.130 of the Government Code.

In summary, the city must release the CR-3 crash reports to the requestor pursuant to section 550.065(c) of the Transportation Code. The city must withhold the motor vehicle record information we marked and any discernible motor vehicle record information in the submitted video recordings under section 552.130 of the Government Code. The city must release the remaining information.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.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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 643168

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a special right of access to the CR-3 crash reports being released, the city must again seek a ruling from this office if it received a request for this information from an individual other than this requestor. *See* Transp. Code § 550.065(c).