



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 15, 2017

Mr. Sam Elsass
Legal Assistant
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR2017-05384

Dear Mr. Elsass:

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# 648958 (PIR's # 16-7696, 16-7883, 17-0009).

The Texas Department of Public Safety (the "department") received three requests from different requestors for information pertaining to a specified incident, including 911 calls, accident reports, witness statements, photographs, videos, communications regarding the incident, and information regarding investigating officers. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also received and considered one requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information)

Initially, we note the submitted information includes a CR-3 accident report. Section 552.101 of the Government Code excepts from disclosure "information considered

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to be confidential by law, either constitutional, statutory, or by judicial decision.”² *Id.* § 552.101. Section 552.101 encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies to a written report of an accident required under section 550.062. Transp. Code § 550.065(a)(1). Section 550.062 of the Transportation Code states that a law enforcement officer who investigates a motor vehicle accident shall make a written report of the accident if the accident resulted in injury to or the death of a person or damage to the property of any one person to the apparent extent of \$1,000 or more. *Id.* § 550.062. You state the incident at issue in the CR-3 accident report was not a traffic crash requiring a report under section 550.065 of the Transportation Code.³ We note the incident at issue involved a motor vehicle accident which resulted in the death of an individual. Based on our review of the information at issue and the department’s failure to explain why the traffic crash does not require creation of a report under section 550.065, we find the CR-3 accident report was created by the investigating officer pursuant to section 550.062 of the Transportation Code. Therefore, the CR-3 accident report is subject to section 550.065 of the Transportation Code. 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 shall 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). In this instance, some of the requestors may be the authorized representatives of an individual involved in the accident which is the subject of the request. Thus, to the extent the requestors are the authorized representatives of an individual involved in the accident, the department must release the accident report to the requestors pursuant to section 550.065(c). To the extent the requestors are not authorized representatives of an individual involved in the accident, then the requestors are not persons listed under section 550.065(c), the submitted accident report is confidential under section 550.065(b), and the department must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the department 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, if the requestors are not persons listed under section 550.065(c), the requestors have a right of access to the redacted accident report. In either instance, although the department asserts section 552.108 to withhold the information, a statutory right of access prevails over the Act’s general exceptions to public disclosure.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³Although you reference section 552.065 of the Transportation Code, we understand you to reference section 550.065 of the Transportation Code based on the substance of your argument.

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 requestors' statutory access under subsections 550.065(c) and 550.065(c-1) prevails and the department may not withhold the information under section 552.108 of the Government Code.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the 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). You state the information at issue relates to an ongoing investigation. Based on your representation and our review, 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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the vehicles involved, if any, and the names of investigating officers. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, if the requestors are the authorized representatives of an individual involved in the accident, then the department must release the CR-3 accident report pursuant to section 550.065(c) of the Transportation Code. If the requestors are not the authorized representatives of an individual involved in the accident, then the accident report must be withheld under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; however, the department must release a redacted accident report to the requestors pursuant to section 550.665(c-1) of the Transportation Code. With the exception of basic information, which 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.

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,

A handwritten signature in cursive script that reads "D. Michelle Case".

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/eb

Ref: ID# 648958

Enc. Submitted documents

c: Requestor
(w/o enclosures)