



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2017

Ms. Michelle Buendia
Ms. Sylvia McClellan
Assistant City Attorneys
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2017-05982

Dear Ms. Buendia and Ms. McClellan:

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# 650258 (ORR Nos. 2016-29445 and 2016-29853).

The Dallas Police Department (the "department") received two requests for information from different requestors in ORR Nos. 2016-29445 and 2016-29853. Both requests relate to a specified criminal investigation. You state you have released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the department received the two requests for information in close temporal proximity. Further, the department requested rulings from this office under section 552.301 of the Government Code on January 11, 2017, and January 12, 2017. The department acknowledges it must release basic information from the submitted information pursuant to section 552.108(c) of the Government Code. *See* Gov't Code § 552.108(c) (basic information about an arrest, arrested person, or crime cannot be withheld under section 552.108). With the exception of basic information, the department seeks to withhold the information submitted as responsive to ORR No. 2016-29853 in its entirety from the second requestor. However, the department seeks to withhold from the first requestor only

the portions of the submitted information it marked. Thus, we assume the department released the remainder of the submitted information to the first requestor. We note the department has released information beyond basic information to the first requestor. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Although you raise section 552.108(a)(1) with respect to the second requestor for the information that was released in ORR No. 2016-29445, this section is a discretionary exception and does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the department may not withhold information from one requestor under section 552.108(a)(1) that it has released to the other requestor. Accordingly, with respect to the information the department released to the first requestor in ORR No. 2016-29445, the department may not withhold such information from the second requestor under section 552.108(a)(1) of the Government Code. However, we will consider the department's argument under section 552.108 with respect to the information the department seeks to withhold from both requestors. Further, as sections 552.101, 552.130, and 552.136 of the Government Code make information confidential under law, we will consider the applicability of these exceptions to the remaining 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 \$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 accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity must 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).

Here, the requestors are persons listed under section 550.065(c). Although the department seeks to withhold the accident report under section 552.108, 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 requestors' statutory access under section 550.065(c) prevails and the department may not withhold the information under section 552.108 of the Government Code. Additionally, we understand the department to assert section 552.130 of the Government Code for the motor vehicle record information contained in the accident report. As noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the confidentiality provided under section 552.130 of the Government Code and the right of access provided under section 550.065(c) of the Transportation Code for the redacted accident report. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451. Section 550.065(c) specifically provides access only to accident reports of the type at issue, while section 552.130 generally excepts motor vehicle record information maintained in any context. Thus, we conclude the access to accident reports provided under section 550.065(c) is more specific than the general confidentiality provided under section 552.130. Accordingly, the department may not withhold the information at issue under section 552.130. Thus, the department must release the accident report to the requestors pursuant to section 550.065(c).

Next, we note some of the submitted information the department seeks to withhold in ORR No. 2016-29445 is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(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:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information includes a court-filed document that is subject to section 552.022(a)(17). The department must release this information pursuant to section 552.022(a)(17), unless it is made confidential under the Act or other law. *See id.* However, because section 552.130 of the Government Code can make information

confidential under the Act, we will address the applicability of this section to the information subject to section 552.022(a)(17). We will also address your arguments against disclosure of the remaining information not subject to section 552.022(a)(17).

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: (1) 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(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 a pending criminal investigation. Based upon this representation, we conclude that the release of the information at issue 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, with the exception of the CR-3 report and the court-filed document, the department may withhold the information it has marked in the documents submitted as responsive to ORR No. 2016-29445 from disclosure under section 552.108(a)(1).¹

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(a). We note section 552.130 protects privacy interests. Thus, the first requestor has a right of access to the insured’s motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from that requestor under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). The department must withhold the motor vehicle record information we have marked from the second requestor under section 552.130 of the Government Code.

In summary, with the exception of the CR-3 report and the court-filed document, the department may withhold the information it has marked in the documents submitted as responsive to ORR No. 2016-29445 from disclosure under section 552.108(a)(1). The department must withhold the motor vehicle record information we have marked from the second requestor under section 552.130 of the Government Code. The department must release the remaining information.

¹As our ruling is dispositive, we need not address the department’s remaining arguments against disclosure of this information.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 650258

Enc. Submitted documents

c: Requestor
(w/o enclosures)