



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 24, 2017

Ms. Ann-Marie Sheely  
Assistant County Attorney  
Travis County Attorney's Office  
P. O. Box 1748  
Austin, Texas 78767

OR2017-06099

Dear Ms. Sheely:

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# 650146.

The Travis County Sheriff's Office (the "sheriff's office") received four requests from different requestors for information concerning a specified incident.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup>We note you sent one of the requestors an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the sheriff's office received the required deposit on January 10, 2017. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

<sup>2</sup>We assume that 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.

You state the sheriff's office inadvertently released some of the submitted information. The sheriff's office explains it released portions of the submitted information in response to a prior request for information. We note the Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under Act, but it may not disclose information made confidential by law). Accordingly, the sheriff's office may not withhold the previously released information unless its release is expressly prohibited by law or the information is confidential by law. You claim the information at issue is excepted from disclosure under section 552.108 of the Government Code. However, we note section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the sheriff's office has waived its claim under section 552.108 for the previously released information and may not withhold such information on this basis. We note portions of the previously released information are subject to section 552.130 of the Government Code, which makes information confidential.<sup>3</sup> Therefore, we will consider section 552.130 for the previously released information. Additionally, we will address your argument under section 552.108 for the information not previously released.

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 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).

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

The submitted information includes a CR-3 accident report form. Here, the third and fourth requestors are persons listed under section 550.065(c). Although the sheriff'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 requestors' statutory access under section 550.065(c) prevails and the sheriff's office may not withhold the information under section 552.108 of the Government Code. Thus, the sheriff's office must release the accident report to the third and fourth requestors pursuant to section 550.065(c). However, the remaining requestors are not persons listed under section 550.065(c). Thus, the submitted CR-3 accident report is confidential under section 550.065(b), and the sheriff's office must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the sheriff's office to create a redacted CR-3 report that may be requested by any person. Transp. Code § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Accordingly, the sheriff's office must release the redacted CR-3 report to the remaining requestors pursuant to section 550.065(c-1).

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 submitted information pertains to a pending criminal investigation. Based on your representation and our review, we conclude release of the information not previously released 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, the sheriff's office may withhold the information not previously released under section 552.108(a)(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. Accordingly, the sheriff's office must withhold the motor vehicle record information we marked in the information that was previously released under section 552.130 of the Government Code.

In summary, the sheriff's office must release the accident report to the third and fourth requestors pursuant to section 550.065(c) of the Transportation Code. The sheriff's office

must withhold the submitted accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code from the remaining requestors, but must release the redacted accident report to the remaining requestors pursuant to section 550.065(c-1) of the Transportation Code. The sheriff's office may withhold the information not previously released under section 552.108(a)(1). The sheriff's office must withhold the motor vehicle record information we marked in the information previously released under section 552.130 of the Government Code. The remaining information must be released.

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,



Emily Buchanan  
Assistant Attorney General  
Open Records Division

EB/eb

Ref: ID# 650146

Enc. Submitted documents

c: 5 Requestors  
(w/o enclosures)