



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 10, 2017

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

OR2017-10085

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# 663444.

The Travis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we understand the sheriff's office may have inadvertently released some of the information at issue 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. Although you seek to withhold the previously released information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure and do 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 section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). Accordingly, the sheriff's office has waived its claim under sections 552.103 and 552.108 for any previously released information and may not withhold such information on this basis. However, we will address your arguments under sections 552.103 and 552.108 for the information not previously released.

Some of the submitted information is 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. *See* 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).

In this instance, the requestor is a person listed under section 550.065(c). Although the sheriff's office asserts sections 552.103 and 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 sections 552.103 and 552.108 are general exceptions under the Act, the requestor's statutory access under section 550.065(c) prevails and the sheriff's office may not withhold the information under section 552.103 or section 552.108 of the Government Code. Thus, the sheriff's office must release the accident report to this requestor pursuant to section 550.065(c) of the Transportation Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the remaining information.

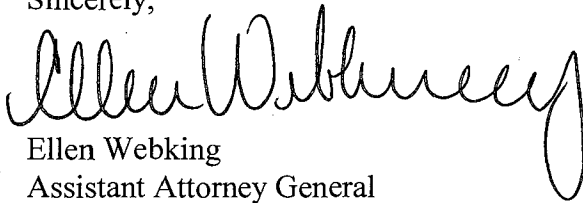
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the

information held to be public in *Houston Chronicle Publishing 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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the accident report, which must be released to this requestor pursuant to section 550.065(c) of the Transportation Code, and the basic information, which must be released, the sheriff's office may withhold the submitted information, to the extent it was not previously released, under section 552.108(a)(2) of the Government Code.¹

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 663444

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive for this information, we do not address the remaining argument against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597at2-3 (1991).