



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 31, 2017

Ms. Melisa McDonald
McLennan County Sheriff's Office
901 Washington Avenue
Waco, Texas 76701

OR2017-17107

Dear Ms. McDonald:

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# 674967.

The McLennan County Sheriff's Office (the "sheriff's office") received four requests for a specified case. 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 information.

Next, we note the submitted information includes a CR-3 accident report. 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. *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. Transp. Code §§ 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

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).

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 first, second, and fourth requestors are persons listed under section 550.065(c). Therefore, these requestors have a right of access to the CR-3 accident report. Although the sheriff's office asserts section 552.108 to withhold the accident report, 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, these requestors' statutory access under section 550.065(c) prevails and the sheriff's office may not withhold the accident report under section 552.108 of the Government Code. Accordingly, the sheriff's office must release the accident report to the first, second, and fourth requestors pursuant to section 550.065(c).

However, the third requestor has not established she is a person listed under section 550.065(c). Thus, the submitted accident report is confidential with respect to the third requestor under section 550.065(b), and the sheriff's office must withhold it under section 552.101 of the Government Code from the third requestor. However, section 550.065(c-1) requires the sheriff's office to create a redacted accident 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.* Therefore, the third requestor has a right of access to the redacted accident report. Although the sheriff's office asserts section 552.108 to withhold the information, as noted above, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, ORDs 613 at 4, 451. Because section 552.108 is a general exception under the Act, the third requestor's statutory access under section 550.065(c-1) prevails and the sheriff's office may not withhold the information under section 552.108 of the Government Code. Accordingly, the sheriff's office must release the redacted accident report to the third requestor 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). The city states the remaining information relates to an active criminal investigation. Based on this representation, we conclude 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, section 552.108(a)(1) is applicable to the remaining information.

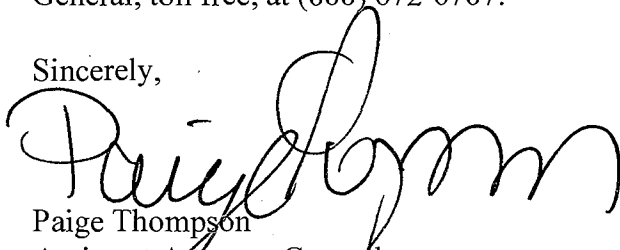
However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception the basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

In summary, the sheriff's office must release the submitted accident report to the first, second, and fourth requestors pursuant to section 550.065(c) of the Transportation Code. The sheriff's office must withhold the submitted accident report from the third requestor pursuant to section 550.065(b) of the Transportation Code, but must release the redacted accident report to the third requestor pursuant to section 550.065(c-1) of the Transportation Code. With the exception the basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

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

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²As our ruling is dispositive, we need not address your remaining argument against disclosure.

³We note basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Ref: ID# 674967

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)