



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 13, 2017

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2017-20968

Dear Ms. Lentz:

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# 675327.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for a specified police report. You state the sheriff's office will withhold dates of birth of public citizens pursuant to Open Records Letter No. 2016-21706 (2016).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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

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<sup>1</sup>Open Records Decision No. 2016-21706 allows the sheriff's office to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office.

\$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).

Upon review, we find the requestor is a person listed under section 550.065(c). *See id.* § 550.065(c)(4)(D). Accordingly, the sheriff's office must release the crash report in its entirety to this requestor pursuant to section 550.065(c) of the Transportation Code.

Section 552.108(a) 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: (1) 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 inform us the Williamson County Attorney's Office (the "county attorney's office") objects to the release of the information you have marked under section 552.108 because the information at issue pertains to a pending prosecution, and release of the information you have marked would interfere with the prosecution of the case. Based upon 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 information you have marked.

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). We note basic information includes, among other items, a sufficient portion of the narrative to include a detailed description of the charged offense. *See* ORD 127 at 3-4. Thus, you must release a sufficient portion of the narrative pertaining to the charged offense to encompass a detailed description of the offense as basic information. *See id.* We further note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Thus, with the exception of the basic information, which must be released, the sheriff's office may generally withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the county attorney's office.

We note the requestor is a representative from the United States Army (the “Army”) and the submitted documentation reveals the named individual is enlisted in the Army. The United States Department of Defense (the “DoD”) is authorized to perform background investigations of persons seeking acceptance or retention in the armed services. *See* 5 U.S.C. § 9101(b)(1)(A)(iii); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Army has a right to the criminal history record information (“CHRI”) of state and local criminal justice agencies when its investigation is conducted with the consent of the individual being investigated. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(6) (DoD includes the Department of the Army). CHRI is defined as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release” but does not include “identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system” or “records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.” 5 U.S.C. § 9101(a)(2).

Federal law provides the Army’s right of access to CHRI preempts state laws. *Id.* § 9101(b)(4) (section 9101 “shall apply notwithstanding any other provision of law . . . of any State”). We conclude the Army’s right of access under federal law preempts the state law you claim. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting a federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Federal law, however, also provides the Army’s right of access is contingent on the request being made for eligibility or retention purposes, and on receiving written consent from the individual under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(c).

In this instance, it is unclear if the individual under investigation is seeking retention in the armed services and if the request is for retention purposes. Further, we have no indication the individual under investigation provided the Army with a signed authorization for the release of the information at issue. Nevertheless, if the instant request was made for retention purposes, and if the Army provides a signed written consent for release from the individual being investigated, then the sheriff’s office must release CHRI from the information at issue to the requestor, and, with the exception of the basic information, may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code. If the instant request was not made for retention purposes, or if the Army does not provide a written consent for release, then, with the exception of basic information, the sheriff’s office may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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<sup>2</sup>In either instance, as our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

In summary, the sheriff's office must release the crash report in its entirety to this requestor pursuant to section 550.065(c) of the Transportation Code. With regard to the remaining information: if the request was for retention purposes and the Army provides a signed written consent for release from the individual whose information is at issue, then the sheriff's office must release CHRI from the information at issue to the requestor, and, with the exception of basic information, may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the county attorney's office; however, if the request was not made for retention purposes or the Army does not provide a signed written consent for release, then, with the exception of basic information, the sheriff's office may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the county attorney's office. In either instance, the sheriff's office must release the basic 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](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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/tdw

Ref: ID# 675327

Enc. Submitted documents

c: Requestor  
(w/o enclosures)