



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 27, 2017

Ms. Katie Leininger
Assistant City Attorney
City Attorney's Office
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581

OR2017-26875

Dear Ms. Leininger:

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# 685032.

The City of Pearland (the "city") received a request for information pertaining to a specified crash report. You state the city has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information consists of grand jury subpoenas and information obtained through grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). Thus, to the extent the city holds this information as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the city is not required to

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

release that information in response to the instant request.² To the extent the city does not hold the information at issue as an agent of the grand jury, we will address your arguments against its disclosure.

Next, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the submitted TCOLE identification number is not subject to the Act and need not be released to the requestor.³

Additionally, we note the submitted information contains a CR-3 accident report. Section 552.101 of the Government Code excepts from disclosure "information considered to be

²In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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).

In this instance, the requestor may be a person listed under section 550.065(c). Although you raise section 552.101 of the Government Code in conjunction with common-law privacy, we note a specific statutory right of access overcomes the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle). Further, although you assert section 552.108 for the information at issue, 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 requestor’s statutory access under section 550.065(c) prevails and the city may not withhold the information at issue under section 552.108 of the Government Code. Thus, to the extent the requestor is a person listed under section 550.065(c) of the Transportation Code, the city must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. To the extent the requestor is not a person listed under section 550.065(c), then the requestor does not have a right of access to the accident report under section 550.065(c). In this event, the submitted accident report is confidential under section 550.065(b) of the Transportation Code, and the city must withhold it under section 552.101 of the Government Code.

However, section 550.065(c-1) requires the city to create a redacted accident report that may be requested by any person. Gov’t Code § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* As noted above, a specific statutory right of access prevails over the common-law and the Act’s general exceptions to public disclosure, such as section 552.108. *See Collins*, 297 S.W.3d at 415; *see also* ORDs 613 at 4, 451. Thus, the requestor’s statutory right of access under section 550.065(c-1) prevails and the city may not withhold the information at issue under either section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code. Therefore, if the requestor is not a person listed under section 550.065(c), then the city must release the redacted accident report to the requestor pursuant to section 550.065(c-1) of the Transportation Code.

Further, we note some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(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:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

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

Gov't Code § 552.022(a)(3), (17). The remaining information contains information in an account, contract, or voucher relating to the receipt or expenditure of funds by the sheriff's office that is subject to section 552.022(a)(3) and court-filed documents that are subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3), (17). You seek to withhold the information subject to sections 552.022(a)(3) and 552.022(a)(17) under section 552.108 of the Government Code. However, section 552.108 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the information subject to sections 552.022(a)(3) and 552.022(a)(17), which we have marked, may not be withheld under section 552.108 of the Government Code. Further, although you also assert the information subject to section 552.022(a)(17) contains information excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Therefore, the city may not withhold the information subject to section 552.022(a)(17) under section 552.101 in conjunction with common-law privacy. However, we note some of the information subject to disclosure under section 552.022 also includes information subject to sections 552.101, 552.117, and 552.130 of the Government Code.⁴ Because these sections make information confidential under the Act, we will address their applicability to the information. Further,

⁴The Office of the Attorney General will raise 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).

we will consider your arguments for the information not subject to section 552.022 of the Government Code.

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). We note some of the remaining information at issue consists of personnel records pertaining to peace officers and administrative records. Section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You state the remaining information pertains to a pending criminal case by the Brazoria County District Attorney’s Office (the “district attorney’s office”). Further, you state, and provide documentation showing, the district attorney’s office has requested the information at issue not be released because its release would interfere with the prosecution. We note, however, the information at issue includes citations. Because copies of the citations were provided to the individuals who were cited, we find release of the citations will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). We therefore conclude the citations may not be withheld under section 552.108(a)(1). However, based on your representation and our review, we conclude the release of the remaining 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 at issue.

However, we note, and you acknowledge, 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 the basic information does not include dates of birth or motor vehicle record information. *See* ORD 127 at 3-4. Thus, with the exception of the basic information and citations, the city may withhold the remaining information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.⁵

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the biometric identifiers under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). Accordingly, in the information subject to section 552.022(a)(17), the city must withhold the biometric identifiers at issue under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the city must withhold the public citizens’ dates of birth in the citations under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(4) of the Government Code excepts from disclosure the present and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of a peace officer who was killed in the line of duty, regardless of whether the deceased complied with section 552.024 or section 552.1175. Gov’t Code § 552.117(a)(4). Accordingly, the city must withhold the information we marked under section 552.117(a)(4) of the Government Code.

Section 552.130 provides that information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1). The city must withhold the motor vehicle record information we have marked in the information subject to section 552.022 of the Government Code and the citations under section 552.130 of the Government Code.

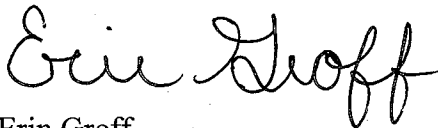
In summary, to the extent the city holds the information at issue as an agent of the grand jury, the city is not required to release that information in response to the instant request. The submitted TCOLE identification number is not subject to the Act and need not be released to the requestor. If the requestor is a party listed under section 550.065(c), then the city must release the CR-3 accident report pursuant to section 550.065(c) of the Transportation Code. If the requestor is not a party listed under section 550.065(c), then the accident report must be withheld under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; however, the city must release a redacted accident report to the requestor pursuant to section 550.665(c-1) of the Transportation Code.

With the exception of the information subject to sections 552.022(a)(3) and 552.022(a)(17) of the Government Code and the basic information and citations, which must be released, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the citations, the city must withhold the public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. In releasing the information subject to section 552.022(a)(17), the city must: (1) withhold the biometric identifiers at issue under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; and (2) withhold the information we marked under section 552.117(a)(4) of the Government Code. In releasing the information subject to sections 552.022(a)(3) and 552.022(a)(17) and the citations, the city must withhold the information we have marked under section 552.130 of the Government Code.

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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/sb

Ref: ID# 685032

Enc. Submitted documents

c: Requestor
(w/o enclosures)