



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2017

Ms. Laura Anne Coats
Assistant District Attorney
Dallas County
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2017-28508

Dear Ms. Coats:

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# 688154.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified prosecution. The district attorney's office claims the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information contains CR-3 accident reports that are 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. Act of June 1, 2015, 84th Leg., R.S., ch. 936, § 1, 2015 Tex. Sess. Law Serv. 3256 (to be codified at 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 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).

The requestor represents a person listed under section 550.065(c). Although the district attorney'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). Sections 552.103 and 552.108 are general exceptions 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. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). There, the requestor's statutory access under section 550.065(c) prevails and the district attorney's office may not withhold the information under section 552.103 or 552.108 of the Government Code. Thus, the district attorney's office must release the CR-3 accident reports pursuant to section 550.065(c) of the Transportation Code.

Next, we note the remaining information contains court-filed documents that are subject to section 552.022(a)(17) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

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

Gov't Code § 552.022(a)(17). Although the district attorney's office asserts the information subject to section 552.022(a)(17), which we have marked, is excepted from disclosure under sections 552.103 and 552.108, as noted above these sections are discretionary and do not make information confidential under the Act. Therefore, the district attorney's office may not withhold the information subject to section 552.022(a)(17) under section 552.103 or 552.108. However, section 552.130 of the Government Code makes information confidential under the Act.¹ Accordingly, we will consider the applicability of section 552.130 to the information at issue.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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. The district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.108 of the Government Code states, in pertinent part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body claiming an exception to disclosure under section 552.108 must explain how and why this exception is applicable to

the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." 873 S.W.2d at 380. The district attorney's office states the request for information encompasses the entire prosecution file of the district attorney's office for the specified case. The district attorney's office further states the remaining information reflects the mental impressions or legal reasoning of an attorney representing the state in the case at issue. Thus, upon review, we conclude subsections 552.108(a)(4) and (b)(3) of the Government Code are applicable to the information at issue.

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 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* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the district attorney's office may withhold the remaining information under subsections 552.108(a)(4) and (b)(3) of the Government Code and the court's ruling in *Curry*.²

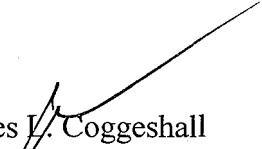
In summary, the district attorney's office must release the CR-3 accident reports pursuant to section 550.065(c) of the Transportation Code. With the exception of the information we have marked under section 552.130 of the Government Code, which the district attorney's office must withhold, the district attorney's office must release the information we have marked under section 552.022(a)(17) of the Government Code. With the exception of basic information, which the district attorney's office must release, the district attorney's office may withhold the remaining information under subsections 552.108(a)(4) and (b)(3) of the Government Code and the court's ruling in *Curry*.

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.

²As our ruling is dispositive, we do not address the other arguments of the district attorney's office to withhold the remaining information, except to note basic information may not be withheld from public disclosure under section 552.103. *See* Open Records Decision No. 597 at 2-3 (1991). We also note the basic information contains the arrestee's social security number. *See* ORD 127 at 4. 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 the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tdw

Ref: ID# 688154

Enc. Submitted documents

c: Requestor
(w/o enclosures)