



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2018

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2018-01537

Dear Ms. Thomas:

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# 692702.

The City of Temple (the "city") received various requests from the same requestor for information pertaining to a specified intersection, including contracts and construction plans. The city claims the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.

Initially, we note the city submitted (1) a list of accidents at the intersection, (2) CR-3 accident reports, and (3) dash-cam video recordings, but it did not submit information responsive to the remaining categories of requested information, including contracts and construction plans. Thus, we find the submitted information is not representative of the other types of information, including the requested personnel files, to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the type of information the city has submitted for our review. This ruling does not authorize the city to withhold any information that is substantially different from the type of information the city submitted to this office. *See* Gov't Code § 552.302. Accordingly, to the extent any information responsive to the remainder of the request for information existed in the possession of the city when it received the request, we assume the city has released that information to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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. 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).

As noted above, the submitted information contains CR-3 accident reports that are subject to chapter 550 of the Transportation Code. The requestor is a person listed under section 550.065(c) for one of these reports. Thus, the requestor has a right of access to this accident report in its entirety pursuant to section 550.065(c). However, the requestor is not a person listed under section 550.065(c) with respect to the remaining submitted crash reports. Thus, the remaining accident reports are confidential under section 550.065(b), and the department must withhold them under section 552.101 of the Government Code.² However, section 550.065(c-1) requires the city to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the requestor has a right of access to the redacted accident reports at issue. Although the city asserts sections 552.103 and 552.108, 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). Thus, the city must (1) release the accident report in which he is a person listed under section 550.065(c) of the Transportation Code in its entirety on that ground, (2) withhold the remaining accident reports under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, and (3) release the redacted accident reports pursuant to section 550.065(c-1) 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

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).

²As our ruling is dispositive, we do not address the other arguments of the city to withhold this information.

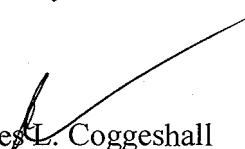
prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The city states the remaining information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

In summary, the city must (1) release the accident report in which the requestor is a person listed under section 550.065(c) of the Transportation Code in its entirety on that ground, (2) withhold the remaining accident reports under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, and (3) release the redacted accident reports pursuant to section 550.065(c-1) of the Transportation Code. The city may withhold the remaining information under section 552.108(a)(1) 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tdw

³As our ruling is dispositive, we do not address the other argument of the city to withhold this information.

Ref: ID# 692702

Enc. Submitted documents

c: Requestor
(w/o enclosures)