



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 29, 2019

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2019-02645

Dear Ms. Lary:

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# 754790.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for seven categories of information pertaining to a specified vehicle accident. We understand the sheriff's office does not maintain information responsive to portions of the request.¹ 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.

Initially, 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." 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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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 has not demonstrated he is a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b), and the sheriff's office must withhold it under section 552.101 of the Government Code. Section 550.065(c-1) requires the sheriff's office to create redacted accident reports that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident reports may not include the information listed in subsection (f)(2). *Id.* Therefore, the requestor has a right of access to the redacted accident report. Although you assert section 552.108 to withhold this 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). Because section 552.108 is a general exception under the Act, the 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. Thus, the sheriff's office must release the redacted accident report to the requestor pursuant to section 550.065(c-1).

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). Generally, 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 state the information at issue relates to a pending criminal case, and release of the information would interfere with the investigation and 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 remaining information.

However, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information

considered to be basic information). Accordingly, with the exception of basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the sheriff's office must withhold the submitted accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, but must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code. With the exception of basic information, which must be released, the sheriff's office 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/gw

Ref: ID# 754790

Enc. Submitted documents

c: Requestor
(w/o enclosures)