



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2019

Ms. Amy L. Sims
Deputy City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2019-10890

Dear Ms. Sims:

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# 769707 (File Nos. 2390, 2391, 2392).

The City of Lubbock (the "city") received three requests from different requestors for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information consists of grand jury subpoenas and information obtained through the 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). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean

¹Although you also raise section 552.101 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent the city holds this information solely 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 release that information in response to the instant request. To the extent the city holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address your arguments against its disclosure.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code §552.101. Section 552.101 of the Government Code 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. *See* 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 submitted information includes CR-3 accident reports. In this instance, the third requestor is a person listed under section 550.065(c). Thus, the third requestor has a right of access to the submitted accident reports under section 550.065(c) of the Transportation Code. Although you assert section 552.108 to withhold the information at issue, a statutory right of access overcomes 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 third requestor's statutory access under section 550.065(c) prevails and the city may not withhold this information under section 552.108 of the Government Code. Thus, the city must release the accident reports to the third requestor pursuant to section 550.065(c) of the Transportation Code.

However, the remaining requestors have not established they are listed under section 550.065(c). Thus, with regards to the remaining requestors, the submitted accident reports are confidential under section 550.065(b), and the city must withhold them from these requestors under section 552.101 of the Government Code. Nevertheless,

section 550.065(c-1) requires the town to create a redacted accident report that may be requested by any person. Transp. Code § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, these requestors have a right of access to the redacted accident reports. Although the city asserts section 552.108 to withhold this information, as noted above, a statutory right of access overcomes the Act's general exceptions to public disclosure. *See, e.g.*, ORDs 613 at 4, 451. Because section 552.108 is a general exception under the Act, the statutory access under section 550.065(c-1) prevails and the city may not withhold the information at issue under section 552.108 of the Government Code. Accordingly, the city must release the redacted accident reports to the first and second requestors pursuant to section 550.065(c-1) of the Transportation 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). 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, 710 (Tex. 1977). You state the information at issue relates to an open and pending criminal investigation. Based upon 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

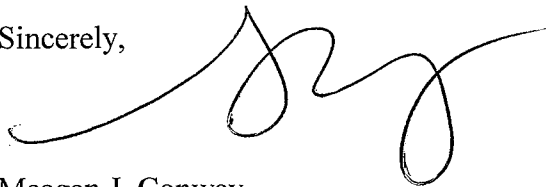
However, section 552.108(a)(1) does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, to the extent the city holds the grand jury subpoenas and information obtained pursuant to the grand jury subpoenas as an agent of the grand jury, the city is not required to release that information in response to the instant request. The city must release the accident reports to the third requestor pursuant to section 550.065(c) of the Transportation Code. The city must withhold the submitted accident reports from the first and second requestors pursuant to section 550.065(b) of the Transportation Code, but must release the redacted accident reports to these requestors pursuant to section 550.065(c-1) of the Transportation Code. With the exception of basic information, which must be released, 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/gw

Ref: ID# 769707

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)