



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 12, 2019

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2019-31855

Dear Mr. Kopp:

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# 796043 (COSA File No. W279450).

The City of San Antonio (the "city") received a request for information pertaining to a specified incident and information pertaining to a named individual during a specified time period. 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 some of the submitted information is not responsive to the present request because it does not pertain to any of the information requested by the requestor. This ruling does not address the public availability of the non-responsive information, and the city need not release it in response to this request.

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

¹The Office of the Attorney General will raise a 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).

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).

The submitted information includes a CR-3 peace officer's crash report. In this instance, we note the requestor may be the authorized representative of a person involved in the accident at issue. *See id.* § 550.065(c)(4)(A)-(B). As we are unable to determine whether the requestor is a person listed under section 550.065(c), we must rule conditionally. If the requestor is a person listed under section 550.065(c), then the requestor has a right of access to the submitted CR-3 accident report. Although you assert section 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). 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 CR-3 accident report under section 552.108 of the Government Code. Thus, if the requestor is a person listed under section 550.065(c), then the city must release the CR-3 accident report to the requestor pursuant to section 550.065(c).

If the requestor is not a person listed under section 550.065(c), then the submitted accident report is confidential under section 550.065(b), 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. Transp. Code § 550.065(c-1). The redacted accident report may not include the information listed in subsection (c)(2). *Id.* Therefore, in that instance, the requestor has a right of access to the redacted accident report. As noted above, although you assert section 552.108 to withhold the information, a statutory right of access prevails over the Act's general exceptions to public disclosure, and the city may not withhold the information under section 552.108 of the Government Code. *See, e.g.,* ORDs 613 at 4, 451. Thus, if the requestor is not a person listed under section 550.065(c), then the city must release the redacted accident report 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: (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 report SAPD19064694 relates to an ongoing investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the submitted 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 (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) applies to report SAPD19064694.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the information pertaining to SAPD19061479 pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) applies to the information pertaining to SAPD19061479.

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, which the city must release, the city may withhold report SAPD19064694 under section 552.108(a)(1) of the Government Code and the information pertaining to SAPD19061479 under section 552.108(a)(2) of the Government Code.

In summary, if the requestor is a person listed under section 550.065(c), then the city must release the CR-3 accident report to the requestor pursuant to section 550.065(c). If the requestor is not a person listed under section 550.065(c), then the city must release the redacted CR-3 accident report to the requestor pursuant to section 550.065(c-1). With the exception of basic information, which the city must release, the city may withhold report SAPD19064694 under section 552.108(a)(1) of the Government Code and the information pertaining to SAPD19061479 under section 552.108(a)(2) 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 <https://www.texasattorneygeneral.gov/open->

government/members-public/what-expect-after-ruling-issued or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, reading "Patrick P. Mehaffy". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/gw

Ref: ID# 796043

Enc. Submitted documents

c: Requestor
(w/o enclosures)