



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 29, 2020

Mr. Juan A. Roque
Assistant District Attorney
Bexar County
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2020-12036

Dear Mr. Roque:

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# 824736 (File Nos. 8351, 8353, 8355; BSCO Nos. 21774, 21705, and 21555).

The Bexar County Sheriff's Office (the "sheriff's office") received three requests from different requestors for information pertaining to a specified traffic accident. 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 representative sample of information.¹

Initially, we note, and you acknowledge, the sheriff's office failed to comply with section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.301 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.3d 379, 381 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Decision No. 586 (1991). Because you inform us, and provide documentation showing, the Bexar County District Attorney's Office (the "district attorney's office) objects to the release of the information at issue, we will consider whether the sheriff's office may withhold the information at issue under section 552.108 of the Government Code on behalf of the district attorney's office.

Next, we note the submitted information includes CR-3 accident reports. 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. *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. *See 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 second requestor is a person listed under section 550.065(c). *See id.* § 550.065(c)(4)(B). Therefore, the second requestor has a right of access to the submitted CR-3 accident reports. The first and third requestors are not persons listed under section 550.065(c) and do not have such a right of access. Accordingly, the sheriff's office must withhold the CR-3 accident reports from the first and third requestors under section 552.101 in conjunction with section 550.065(b) of the Transportation Code. However, section 550.065(c-1) requires the sheriff's office 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 first and third requestors have a right of access to the redacted accident reports. We note although the sheriff's office asserts section 552.108 of the Government Code to withhold the information at issue, 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 requestors' statutory rights of access under sections 550.065(c) and (c-1) prevail and the sheriff's office may not withhold the information at issue under section 552.108 of the Government Code. Therefore, the sheriff's office must release the CR-3 accident reports to the second requestor pursuant to section 550.065(c) of the Transportation Code and must release the redacted CR-3 accident reports to the first and third 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). 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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to a pending case of another law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration the information relates to a pending criminal case and a representation from the law enforcement agency that it wishes to have to the information withheld. The district attorney’s office objects to the release of the information at issue because it relates to a pending criminal investigation, and release of the information would interfere with the 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, we note 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*. *See* 531 S.W.2d at 186-88; *Open Records Decision No. 127 (1976)* (summarizing types of information considered to be basic information). Thus, 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 on behalf of the district attorney’s office.²

In summary, the sheriff’s office must release the CR-3 accident reports to the second requestor pursuant to section 550.065(c) of the Transportation Code. The city must withhold the CR-3 accident reports from the first and third requestors under section 552.101 in conjunction with section 550.065(b) of the Transportation Code, but must release the redacted CR-3 accident reports to the first and third requestors 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 on behalf of the district attorney’s office.

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

² As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jlbm

Ref: ID# 824736

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)