



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 29, 2020

Ms. P. Armstrong
Ms. Sylvia McClellan
Assistant City Attorneys
City of Dallas
1400 South Lamar, 6th Floor, 6W
Dallas, Texas 75215

OR2020-12140

Dear Ms. Armstrong and Ms. McClellan:

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# 824806 (Reference Nos. D000174-010320, D003824-020620).

The Dallas Police Department (the "department") received two requests from different requestors for information pertaining to a specified incident. The first requestor seeks the incident and accident report pertaining to the specified incident. The second requestor seeks several categories of information regarding the specified incident. 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, and you acknowledge, the department failed to comply with section 552.301 of the Government Code with respect to the first request. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 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 Decision No. 586 (1991). Because you inform us, and provide documentation showing, the Dallas County District Attorney's Office (the "district attorney's office") objects to the release of the information at issue, we will consider whether the department 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 court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[.]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). You seek to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the court-filed documents, which we marked, under section 552.108. However, because section 552.130 of the Government Code makes information confidential under the Act, we will consider its applicability for the information subject to section 552.022.¹ We will also consider your argument against disclosure for the information not subject to section 552.022.

We note the remaining 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 550.051, 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). Thus, the second requestor has a right of access to the accident report. However, we note the first requestor is not a person listed under section 550.065(c). Therefore, the submitted accident report is confidential under section 550.065(b) with respect to the first requestor, and the department must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the department to create a

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 requestor has a right of access to the redacted accident report. Although you seek to withhold the information at issue under section 552.108, we note 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 section 550.065(c) and section 550.065(c-1) prevail and the department may not withhold the information under section 552.108 of the Government Code. Thus, the department must release the accident report in its entirety pursuant to section 550.065(c) of the Transportation Code to the second requestor and the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code to the first requestor.

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 representation from the law enforcement agency that it wishes to have 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 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 at issue.

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). We note basic information includes, among other items, a sufficient portion of the narrative to include a detailed description of the offense. *See* ORD 127 at 3-4. In this instance, you have marked the entire narrative portion of the incident report at issue as information you seek to withhold under section 552.108. The remaining information at issue does not contain information sufficient to satisfy the requirement that a "detailed

description of the offense” be released as basic information. *See id.* Accordingly, we determine the department must release a sufficient portion of the narrative to encompass a detailed description of the offense. Thus, with the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.²

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov’t Code* § 552.130. We note section 552.130 protects personal privacy. Thus, the second requestor has a right of access to his client’s motor vehicle record information under section 552.023(a) of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, with the exception of the motor vehicle record information belonging to the second requestor’s client, which must be released to the second requestor, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the department must release the court-filed documents, which we marked, pursuant to section 552.022(a)(17) of the Government Code; in releasing these court-filed documents, with the exception of the motor vehicle record information belonging to the second requestor’s client, which must be released to the second requestor, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must release the submitted CR-3 accident report to the second requestor pursuant to section 550.065(c) of the Transportation Code. The submitted CR-3 accident report is confidential under section 550.065(b) with respect to the first requestor and the department must withhold it under section 552.101 of the Government Code, but must release the redacted accident report to the first requestor pursuant to section 550.065(c-1) of the Transportation Code. With the exception of basic information, which must be released, the department 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

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).

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/rm

Ref: ID# 824806

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)