



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 2, 2020

Ms. Cary Grace  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767

OR2020-15192

Dear Ms. Grace:

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# 832211 (ID#s R035207 and R035871).

The Austin Police Department (the "department") received two requests for information related to a specified incident.<sup>1</sup> You state you will release some information to the requestors. 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.<sup>2</sup>

Initially, we note the submitted information includes a CR-3 accident report that is 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

---

<sup>1</sup>We note the department received initial requests for the same information from these requestors (the "first" and "second" requestors, respectively) on August 15, 2019 and April 3, 2020. In response to the initial requests, the department informs us it released basic information to the requestors within five business days, and then withheld the remaining information at issue under section 552.108(a)(1) of the Government Code, pursuant to the previous determination this office issued to the department in Open Records Letter No. 2016-10001 (2016). Subsequently, the requestors made a second request for the same information on March 20, 2020 and April 9, 2020, respectively.

<sup>2</sup> We assume that 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.

§ 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).

In this instance, the second requestor is a person listed under section 550.065(c).<sup>3</sup> Although you assert section 552.108 of the Government Code 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) prevails, and the department may not withhold the information under section 552.108 of the Government Code. Thus, the department must release the CR-3 accident report to the second requestor pursuant to section 550.065(c) of the Transportation Code.

Next, we note the submitted information includes a search warrant, which is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the department may not withhold the search warrant under section 552.108. We also note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the court-filed document may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We will next consider the raised argument for the information not subject to section 552.022.

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). You state the information at issue

---

<sup>3</sup> We note the first requestor specifically excluded a copy of the CR-3 from the scope of her request. Thus, this information need not be released to the first requestor.

pertains to pending criminal prosecutions. Based on this representation, we conclude section 552.108(a)(1) is applicable to the remaining information. *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).

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” 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 basic information). Accordingly, with the exception of the basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must release the CR-3 accident report to the second requestor pursuant to section 550.065(c) of the Transportation Code. With the exception of the search warrant subject to section 552.022(a)(17) of the Government Code and basic information, which must be released, the department 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 <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,

Michael Pearle  
Assistant Attorney General  
Open Records Division

MP/gw

Ref: ID# 832211

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)