



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2020

Ms. Sara Casares
Office Specialist
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2020-30257

Dear Ms. Casares:

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# 856719 (ORR# P001355-092120).

The Edinburg Police Department (the "department") received a request for information pertaining to a specified case.¹ You claim the submitted information is excepted from disclosure under sections 552.108 and 552.1085 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes documents filed with a court. Section 552.022 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). Although the department seeks to withhold this information under section 552.108 of the Government

¹ We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² Although the department raises section 552.101 of the Government Code, it makes no arguments to support this exception. Therefore, we assume the department has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302. Although the department does not cite to section 552.1085 of the Government Code in its brief to this office, we understand it to raise section 552.1085 based on its markings.

Code, 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 Gov't Code § 552.108 subject to waiver). Therefore, the court-filed documents we have marked may not be withheld under section 552.108. However, we will address your arguments against disclosure of the remaining information.

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 remaining information relates to a pending investigation and prosecution. We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The Statutory Warning and Notice of Suspension have previously been provided to the arrestee. The department has not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the DIC-24 Statutory Warning and DIC-25 Notice of Suspension forms may not be withheld under section 552.108. However, based on your representation and our review, we find release of the remaining 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) is applicable to the remaining information.

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 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be 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.

However, we note the requestor is a contracted investigator with the United States Department of Transportation (“DOT”) National Highway Traffic Safety Administration. Accordingly, we will consider whether federal law permits the requestor to obtain information that otherwise may be protected under the Act. Section 30166(b)(1)(B) of title 49 of the United States Code provides:

(b) Authority to inspect and investigate.

- (1) The Secretary of Transportation may conduct an inspection or investigation

...

(B) related to a motor vehicle accident and designed to carry out [chapter 301 of title 49 of the United States Code].

49 U.S.C. § 30166(b)(1)(B). The purpose of Chapter 301 is “to reduce traffic accidents and deaths and injuries resulting from traffic accidents. . . [and] (1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and (2) to carry out needed safety research and development.” 49 U.S.C. § 30101. Motor vehicle accident is defined as “an occurrence associated with the maintenance or operation of a motor vehicle or motor vehicle equipment resulting in personal injury, death, or property damage.” *Id.* § 30166(a).

Further, section 30166(c) of title 49 states in part:

(c) Matters that can be inspected and impoundment. In carrying out this chapter, an officer or employee designated by the Secretary of Transportation:

(1) at reasonable times, may inspect and copy any record related to this chapter[.]

Id. § 30166(c)(1). The requestor is an investigator with the DOT who seeks the information for the purpose of performing motor vehicle safety research. Therefore, we conclude this requestor has the right to inspect and copy records related to motor vehicle accidents pursuant to an investigation under chapter 301 of title 49 of the United States Code. We find the information at issue concerns a motor vehicle accident as defined by section 30166(a) of title 49 of the United States Code. Therefore, under federal law, the requestor has the right to inspect and copy the information at issue. As federal law, section 30166 of title 49 preempts any conflicting state provisions, including section 552.101 and section 552.130 of the Government Code. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Thus, although portions of the submitted information may be confidential under these sections, the requestor’s right of access under federal law preempts these state statutes. In addition, the requestor’s right of access under federal law preempts the protection afforded by sections 552.108 and 552.1085 of the Government Code. *See* U.S. Const. art. VI, cl. 2 (Supremacy Clause); *Delta Airlines, Inc. v. Black*, 116 S.W.3d 745, 748 (Tex. 2003) (discussing federal preemption of state law). Therefore, the department must allow the requestor to inspect and copy the submitted information pursuant to section 30166(c)(1) of title 49 of the United States Code.³

³Because this requestor has a special right of access to information being released, in the event the department receives another request for this information from someone without such a right of access, the department must against ask this office for a ruling.

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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/mo

Ref: ID# 856719

Enc. Submitted documents

c: Requestor
(w/o enclosures)