



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 20, 2022

Ms. Jennifer Slack
Assistant District Attorney
Lubbock County
904 Broadway, Second Floor
Lubbock, Texas 79401

OR2022-01595

Dear Ms. Slack:

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# 926554 (Ref No. 21-ORR-0214).

The Lubbock County Medical Examiner's Office (the "medical examiner's office") received a request for the autopsy file, including the report and photographs, pertaining to a named decedent. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a CR-3 accident report. 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 requestor represents a person listed under section 550.065(c). *See id.* § 550.065(c)(4). Thus, the requestor has a right of access to the accident report. Although you seek to withhold the information at issue under sections 552.103 and 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 sections 552.103 and 552.108 are general exceptions under the Act, the requestor's statutory right of access under section 550.065(c) prevails and the medical examiner's office may not withhold the information under section 552.103 or 552.108 of the Government Code. Thus, the medical examiner's office must release the accident report in its entirety pursuant to section 550.065(c) 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 the 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 non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You state the Lubbock County Criminal District Attorney’s Office (the “district attorney’s office”) objects to the remaining information because it relates to a pending criminal prosecution. 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). Accordingly, the medical examiner’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.¹

In summary, the medical examiner’s office must release the accident report in its entirety pursuant to section 550.065(c) of the Transportation Code. The medical examiner’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.

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jxd

Ref: ID# 926554

Enc. Submitted documents

c: Requestor
(w/o enclosures)