



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 25, 2022

Mr. David V. Overcash
Counsel for the City of Anna
Wolfe, Tidwell & McCoy, L.L.P.
2591 Dallas Parkway, Suite 300
Frisco, Texas 75034

OR2022-05794

Dear Mr. Overcash:

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# 932732 (City File Nos. W003567-112221 and W003584-120121).

The City of Anna (the "city"), which you represent, received two requests from different requestors for information related to a specified incident. We understand you will release some information to the requestors, including the CR-3 accident reports pursuant to section 550.065(c) of the Transportation Code. *See* Transp. Code § 550.065(c). You state you will withhold some of the submitted information pursuant to section 552.136(c) of the Government Code and Open Records Letter No. 2019-14751 (2019).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the city received the two requests for information in close temporal proximity. Further, we note you requested rulings from this office under section 552.301 of the Government Code on December 8, 2021, and December 15, 2021. We note you have

¹ Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Letter No. 2019-14751 authorizes the city to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

marked portions of the information to be withheld from the second requestor under section 552.108 of the Government Code, but do not seek to withhold this same information from the first requestor. Thus, we assume the city will release the information at issue to the first requestor. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Although you raise section 552.108 with respect to the inconsistently marked information, this section is a discretionary exception and does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the city may not withhold information from one requestor under section 552.108 that it has released to the other requestor. Accordingly, with respect to the information the city releases to either requestor, the city may not withhold such information from the other requestor under section 552.108 of the Government Code. However, we will consider your argument under section 552.108 with respect to the information you seek to withhold from both requestors.

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 relates to a pending criminal investigation or prosecution. Based on your representation and our review, we find 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, with the exception of the information the city did not seek to withhold in response to the first request, the city may withhold the information you have marked and indicated under section 552.108(a)(1) of the Government Code.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. Gov't Code § 552.130. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to his own motor vehicle record

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

information. *See id.* § 552.023(a) (person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, with the exception of the information the city did not seek to withhold in response to the first request, the city may withhold the information you have marked and indicated under section 552.108(a)(1) of the Government Code. The city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The city must release the remaining information to these requestors.³

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

³ We note the information being released to the first requestor contains information to which the first requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); *see also* ORD 481 at 4. However, as noted Open Records Letter No. 2019-14751 (2019) is a previous determination issued to the city authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. We further note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Mr. David V. Overcash - Page 4

Ref: ID# 932732

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)