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ATTORNEY GENERAL OF TEXAS

April 25, 2022

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

OR2022-11814

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# 943311 (Reference Nos. W003670 and W003715).

The City of Anna (the "city"), which you represent, received two requests from different requestors for information pertaining to a specified incident. You state the city is withholding certain dates of birth pursuant to the previous determination issued in Open Records Letter No. 2019-14751 (2019).¹ You claim some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. You also claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, we note you raise section 552.101 in conjunction with section 550.065 of the Transportation Code for the information you have marked. Section 552.101 of the

¹ Open Records Letter No. 2019-14751 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.

² We assume 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.

Government Code excepts from public 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 550.061, 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. *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 requestors are persons listed under section 550.065(c) and have statutory access under section 550.065(c). *See id.* § 550.065(c)(4)(b). Therefore, the requestors have access to the accident reports under section 550.065(c) and the city may not withhold this information under section 552.101 in conjunction with section 550.065. Accordingly, the city must release the accident reports to these requestors 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: (1) 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 you marked and indicated relates to an ongoing criminal investigation. 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 information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *See* 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). We note basic information includes, among other items, a detailed description of the offense and the identities of the complainants, but does not include, among other items, motor vehicle record information encompassed by section 552.130 of the Government Code, information related to witnesses or victims who are not

the complainant, or dates of birth. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, which must be released, the city may withhold the information you marked and indicated under section 552.108(a)(1) of the Government Code.³

Section 552.101 of the Government Code also encompasses information made confidential by section 773.091 of the Health and Safety Code, which provides, in part, the following:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Upon review, we find the information we marked constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, section 773.091 is applicable to this information. Accordingly, with the exception of information subject to section 773.091(g) of the Health and Safety Code, which must be released, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.⁴

In summary, the city must release the accident reports to these requestors pursuant to section 550.065(c) of the Transportation Code. With the exception of basic information,

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information or the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

⁴ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

which must be released, the city may withhold the information you marked and indicated under section 552.108(a)(1) of the Government Code. With the exception of information subject to section 773.091(g) of the Health and Safety Code, which must be released, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must release the remaining 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 943311

Enc. Submitted documents

c: Requestors
(w/o enclosures)