



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2005

Mr. Marcus L. Winberry
City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2005-03413

Dear Mr. Winberry:

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# 222484.

The Conroe Police Department (the "department") received a request for information relating to an investigation of a fatal accident. You inform us that the department has released some of the requested information, including basic information under section 552.108(c) of the Government Code. *See* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You claim that the rest of the requested information is excepted from disclosure under sections 552.108 and 552.130. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially, we address the submitted Texas peace officer's accident reports. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for the release of an accident report to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, the Department of Public

Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the three items of information specified by section 550.065(c)(4). *Id.*

In this instance, the requestor has provided two of the three specified items of information. Accordingly, the submitted accident reports, including the commercial motor vehicle supplement, must be released under section 550.065(b). You inform us that most of the information in these documents has been released. You also state, however, that certain information was redacted from one of the accident reports on the basis of the department's claim under section 552.108 of the Government Code. As a general rule, the exceptions to disclosure found in the Act do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the information that was redacted from the accident report must also be released to the requestor under section 550.065(b) of the Transportation Code.

Next, we address your claim under section 552.108. This section 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the rest of the information at issue relates to a pending criminal prosecution. You also state, and have provided a letter from an assistant district attorney asserting, that the release of the information in question would interfere with the prosecution. Based on your representations and the prosecutor’s letter, we conclude that the rest of the requested information is excepted from disclosure under section 552.108(a)(1). *See* Gov’t Code § 552.108(a)(1); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d at 186-87 (court delineates law enforcement interests that are present in active cases).

In summary: (1) under section 550.065 of the Transportation Code, the department must release the information that was redacted from the accident reports; and (2) the department may withhold the rest of the requested information under section 552.108(a)(1). As we are able to make these determinations, we do not address section 552.130.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

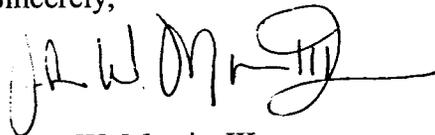
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 222484

Enc: Submitted documents

c: Ms. Pamela K. Sanders
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New Waverly, Texas 77358
(w/o enclosures)