



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2007

Ms. Kelly E. Pagan
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-15394

Dear Ms. Pagan:

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# 295684.

The Fort Worth Police Department (the "department") received a request for all information pertaining to a specified accident investigation file. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a search warrant filed in the Fort Worth Municipal Court. Section 552.022 provides that information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022, the search warrant must be released to the requestor, unless it is confidential under other law. Although you raise section 552.108 for this information, we note that this section is a discretionary exception to disclosure under the Act that does not make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory predecessor to Gov't Code

§ 552.108 subject to waiver). Therefore, the search warrant is not excepted under section 552.108 of the Government Code and it must be released.¹

Next, we note that the submitted information contains CRB-3 accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports 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. *Id.* § 550.065(c)(4). In this instance, the requestor provided the date of the accident and the name of one individual involved in the accident. Accordingly, the department must release the submitted CRB-3 forms pursuant to chapter 550 of the Transportation Code.

We now address your argument under section 552.108 of the Government Code for the remaining portions of the investigation file. Section 552.108 of the Government Code exempts from public 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 at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). You state that the information at issue pertains to an open criminal investigation, and that release of the information would interfere with this investigation. Based on your representations and our review, we conclude that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You seek to withhold from disclosure the identifying information of an individual you characterize as a complainant in this investigation. A complainant’s identification is generally considered basic information. This individual is not, however, a complainant. Thus, the individual’s identity is not basic information and it may be withheld under 552.108(a)(1). Accordingly, with the exception of the basic front-page offense and

¹The search warrant contains a Texas issued vehicle identification number. You state that you have redacted Texas motor vehicle record information under section 552.130 of the Government Code pursuant to a previous determination issued to the City of Fort Worth in Open Records Letter No. 2007-00198 (2007). *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

arrest information, the department may withhold the remaining information under section 552.108(a)(1).²

In summary, the department must release: (1) the search warrant, which is made public under section 552.022(a)(17) of the Government Code; and (2) the CRB-3 forms that we have marked under section 550.065 of the Transportation Code. With the exception of basic, front page information, the department may withhold the remaining information from public disclosure under section 552.108(a)(1) of the Government Code.

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); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

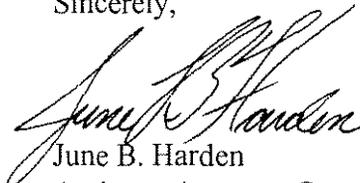
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling,

²As our ruling is dispositive, we do not address your remaining arguments against disclosure.

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 Office of the Attorney General 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. 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/mcf

Ref: ID# 295684

Enc. Submitted documents

c: Mr. Andrew Gunn
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(w/o enclosures)