



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 10, 2008

Mr. Samuel D. Hawk  
Assistant City Attorney  
City of Dallas  
Criminal Law and Police Division  
1400 South Lamar  
Dallas, Texas 75215

OR2008-13935

Dear Mr. Hawk:

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# 324323.

The Dallas Police Department (the "department") received a request for the entire file pertaining to a bait car used by the department that was involved in a specified automobile accident. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 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 CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. 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. 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 CR-3 form pursuant to chapter 550 of the Transportation Code.

We next note that some of the submitted information falls within the scope of section 552.022(a)(3) of the Government Code. Section 552.022(a)(3) provides for required disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[,]" unless the information is expressly confidential under other law. *Id.* § 552.022(a)(3). Thus, the department must release the payment receipts showing an expenditure of funds pursuant to section 552.022(a)(3), unless that information is expressly confidential under other law. Although you seek to withhold the information under sections 552.103 and 552.108 of the Government Code, those sections are discretionary exceptions to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *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 section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally) 177 (1977) (governmental body may waive statutory predecessor to section 552.108). As such, sections 552.103 and 552.108 are not other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, the submitted payment receipts showing an expenditure of funds by the department, which we have marked, may not be withheld under sections 552.103 or 552.108. However, because information subject to section 552.022 may be withheld under section 552.130, we will consider the applicability of this exception to the documents that are subject to section 552.022, as well as the remaining information.<sup>1</sup>

We note that some of the submitted incident reports and payment receipts contain information that is subject to section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to a driver's license, motor vehicle title, or registration issued by an agency of this state. Gov't Code § 552.130. We note that section 552.130 does not encompass motor vehicle record information that pertains exclusively to a deceased individual. *See* Open Records Decision No. 272 (1981) (privacy rights lapse upon death). Thus, the department must withhold the Texas motor vehicle record information that we have marked under section 552.130 of the Government Code.

Next, we address your argument under section 552.108 for the information not subject to section 552.022. Section 552.108 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 is excepted from disclosure under the Act if 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 must reasonably

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<sup>1</sup>Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2201) (mandatory exceptions).

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 have marked the information that the department seeks to withhold under section 552.108. You state that the marked information relates to an active criminal investigation. Based upon your representation and our review, we determine that the release of this information would interfere with the detection, investigation, or prosecution of crime. We therefore agree that section 552.108(a)(1) is applicable to the remaining information you have marked. *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).

To conclude, the department must release the CR-3 accident report we have marked in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. The department must generally release the information we have marked that is subject to section 552.022(a)(3) of the Government Code. The department must withhold the Texas motor vehicle information we have marked under section 552.130. The remaining information you have marked under section 552.108 may be withheld. The remaining information must be released.<sup>2</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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,

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 challenge 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, 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,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/jh

Ref: ID# 324323

Enc. Submitted documents

c: Mr. Don Martinez  
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(w/o enclosures)