



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 9, 2009

Mr. Clark McCoy  
Wolfe, Tidwell & McCoy, L.L.P.  
2591 Dallas Parkway, Suite 205  
Frisco, Texas 75034

OR2009-01664

Dear Mr. McCoy:

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# 336686.

The Anna Police Department (the "department"), which you represent, received a request for a specified accident report. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes CR-3 and CR-3C accident report forms 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), such 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) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, a governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In this instance the requestor has provided the department with the required pieces of information. Thus, the department must release the CR-3 and CR-3C accident report forms in their entirety under section 550.065 of the Transportation Code.

The submitted information also contains a search warrant and order of assignment that have been filed with the court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Although you assert that this information is excepted under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore,

section 552.108 does not constitute other law for purposes of section 552.022(a)(17). Accordingly, the department may not withhold the court-filed search warrant and order of assignment under section 552.108.

Section 552.108(a) 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 reasonably explain how and why the release of the requested information would interfere with law enforcement. Gov’t Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to an ongoing investigation. Based on this representation, we conclude that releasing the remaining information, which consists of a search warrant affidavit, 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 [14<sup>th</sup> 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). Accordingly, we agree that section 552.108(a)(1) applies to the search warrant affidavit, and it may be withheld on that basis.

In summary, the department must release the CR-3 and CR-3C accident reports pursuant to section 550.065 of the Transportation Code. The department may withhold the search warrant affidavit under section 552.108(a)(1) of the Government Code. The remaining information must be released.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/jb

Ref: ID# 336686

Enc. Submitted documents

c: Requestor  
(w/o enclosures)