



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2009

Ms. Cheryl K. Byles
Mr. C. Patrick Phillips
Assistant City Attorneys
City of Fort Worth
1000 Throckmorton Street 3rd Floor
Fort Worth, Texas 76102

OR2009-02341

Dear Ms. Byles and Mr. Phillips:

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# 339323 (PIR Nos. 1620-09, 1755-09, and 1756-09).

The City of Fort Worth and the Fort Worth Police Department (collectively the "city") received three requests from two requestors for information relating to a fatal accident. You state that the city has redacted social security numbers pursuant to section 552.147 of the Government Code and Texas motor vehicle record information pursuant to previous determinations issued to the city under section 552.130 of the Government Code.¹ *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). You claim that the rest of 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 information you submitted. We also have considered the comments that we received from one of the requestors.²

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

¹Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

²*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Code § 552.101. This exception encompasses information that other statutes make confidential. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items 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 id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation 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 items of information specified by the statute. *Id.* The submitted information includes a crash report that was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). In this instance, the first requestor has not provided the city with two of the three specified items of information. Therefore, the crash report must be withheld from the first requestor pursuant to section 550.065(b) of the Transportation Code. However, the second requestor has provided the city with two of the three specified items of information. Therefore, the city must release the crash report that we have marked to the second requestor pursuant to section 550.065(c)(4).

The submitted documents also include information that has been filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court-filed information, which we have marked, under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the city may not withhold any of the marked information that has been filed with a court under section 552.108 of the Government Code. As you claim no other exception to the disclosure of the court-filed information, it must be released to both requestors.

Next, we address your claim under section 552.108. Section 552.108(a)(1) 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 must reasonably explain how and why section 552.108 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 inform us, and have provided an affidavit from the Tarrant County District Attorney's Office stating, that the rest of the submitted information is related to two pending criminal prosecutions. Based on your representation and the affidavit, we conclude that section 552.108(a)(1) is generally applicable to the remaining information. *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).

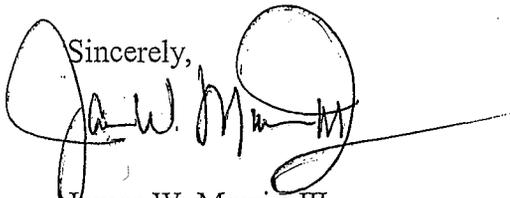
Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city may withhold the rest of the submitted information from both requestors under section 552.108(a)(1).

In summary: (1) the crash report must be withheld from the first requestor pursuant to section 550.065(b) of the Transportation Code and released to the second requestor pursuant to section 550.065(c)(4); (2) the court-filed information must be released to both requestors pursuant to section 552.022(a)(17) of the Government Code; and (3) the city may withhold the rest of the submitted information from both requestors under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c). As we are able to make these determinations, we need not address your other arguments against disclosure.

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, 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal line extending to the right.

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

JWM/cc

Ref: ID# 339323

Enc: Submitted documents

c: Requestors
(w/o enclosures)