



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2009

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

OR2009-02863

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# 336327.

The City of Anna (the "city"), which you represent, received a request for information pertaining to a specified accident. You state the city has released or will release some of the requested information. 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 contains CR-3 and CR-3C 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 forms). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes such as section 550.065(b) of the Transportation Code. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *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.* In this instance, the requestor has not provided the city with two of the three specified items of information. Thus, the city must withhold the marked CR-3 and CR-3C accident report forms under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

The submitted information also contains a search warrant and order of assignment that have been filed with a court. A document that has been filed with a court is expressly public under section 552.022(a)(17) 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 city may not withhold the court-filed search warrant and order of assignment, which we have marked, 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 criminal 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 [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). 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 city must withhold the marked CR-3 and CR-3C accident reports pursuant to section 550.065 of the Transportation Code. The city 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 336327

Enc. Submitted documents

c: Requestor
(w/o enclosures)