



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 16, 2009

Ms. Traci S. Briggs
Deputy City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2009-03401

Dear Ms. Briggs:

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# 337384.

The City of Killeen (the "city") received a request for all information pertaining to a specified accident, including the city employee's drug screen and driving record. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The submitted information includes copies of 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 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) 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 pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the city

with two of the three pieces of information. Accordingly, the city must release the accident reports, which we have marked, pursuant to section 550.065 of the Transportation Code.

We note portions of the remaining information are subject to section 552.022 of the Government Code, which provides:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of an estimate[.]

Gov't Code § 552.022(a)(3), (5). The submitted information contains information in an account relating to the receipt of funds and a completed estimate which must be released under section 552.022 unless they are confidential under other law. You claim this information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108, however, 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 Nos. 586 (1991) (governmental body may waive section 552.108), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Accordingly, the city may not withhold the information that is subject to section 552.022, which we have marked, under section 552.108. We note portions of the information subject to section 552.022 are subject to section 552.136 of the Government Code.¹ Section 552.136 is other law for the purposes of section 552.022. Accordingly, we will address whether section 552.136 is applicable to this information.

Section 552.136(b) states "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see*

¹The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

id. § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. We have marked bank account, routing, and insurance policy numbers in the information that is subject to section 552.022(a)(3). Accordingly, the city must withhold the information we have marked under section 552.136. As no further exceptions to disclosure have been raised, the remaining portion of the information subject to section 552.022 must be released.

You claim the remaining information not subject to section 552.022 is subject to section 552.108 of the Government Code. 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[.]” *Id.* § 552.108(a)(1). Generally, 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. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining submitted information pertains to a pending prosecution and the prosecutor claims release of this information may jeopardize the prosecution’s case. Based on your representations and our review, we conclude the release the information not subject to section 552.022 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., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, we agree the information not subject to section 552.022 may be withheld under section 552.108(a)(1).²

In summary, the city must release the information we have marked under section 550.065 of the Transportation Code. The city must withhold the insurance policy, bank account, and routing numbers we have marked under section 552.136. The city may withhold the remaining information that is not subject to section 552.022 under section 552.108(a)(1) of the Government Code. The remaining information that is subject to section 552.022 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,

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 cursive script that reads "Olivia A. Maceo".

Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eb

Ref: ID# 337384

Enc. Submitted documents

c: Requestor
(w/o enclosures)