



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2009

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2009-06318

Dear Mr. Weir:

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# 346954 (ORR 2009-2821).

The San Antonio Police Department (the "department") received a request for information relating to a traffic accident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note, and you acknowledge, that the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(a)-(b), (e) (prescribing deadlines for governmental body's request for attorney general's decision under Act). The submitted information is therefore presumed to be public under section 552.302 of the Government Code and must be released, unless there is a compelling reason to withhold any of the information. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You raise section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Nevertheless, the law enforcement interests under

section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us that the Bexar County District Attorney's Office (the "district attorney") asserts an interest in the submitted information. Therefore, we will determine whether the department may withhold the submitted information on behalf of the district attorney under section 552.108.

We first note that the submitted documents include copies of a Texas peace officer's crash report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 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.* In this instance, the requestor has provided the department with two of the three specified items of information. Therefore, the submitted crash report must be released pursuant to section 550.065(c)(4) of the Transportation Code.

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 . . . 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 a letter from the district attorney stating, that the rest of the submitted information is related to a pending criminal case. The district attorney indicates that release of the information would interfere with the investigation and prosecution of a crime. Based on your representation and the district attorney's letter, 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).

We note that 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 department 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

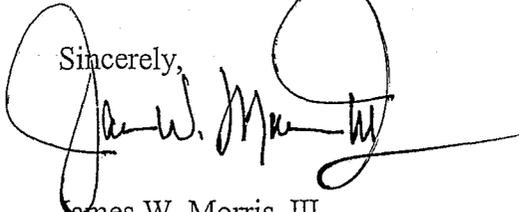
types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information on behalf of the district attorney under section 552.108(a)(1).

In summary: (1) the department must release the submitted crash report pursuant to section 550.065(c)(4) of the Transportation Code; and (2) the department may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).

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 "James W. Morris, III", with a long horizontal flourish extending to the right.

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

JWM/cc

Ref: ID# 346954

Enc: Submitted documents

c: Requestor
(w/o enclosures)