



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 30, 2009

Ms. Natasha Brooks
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2009-09057

Dear Ms. Brooks:

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# 352019.

The Midland Police Department (the "department") received a request for information related to a fatal accident. You state that some responsive information has been released to the requestor. You claim that the remaining 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 submitted information.

Initially, we note that the submitted information includes search warrants. Section 552.022 of the Government Code provides that information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022, if the submitted search warrants have been filed with the court, they must be released to the requestor, unless they are confidential under other law. Although you raise section 552.108 for this information, we note that this section is a discretionary exception to disclosure under the Act that does not constitute "other law" for purposes of section 552.022(a)(17). Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally); 177 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the search warrants that have been filed with the court are not excepted under section 552.108 of the Government Code, and must be released to the requestor.

We next note that the submitted information includes a 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.¹ *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, which we have marked, must be released in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.²

You claim that the remaining information in Exhibit B is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts “[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 that release of the remaining information would interfere with a pending criminal case. Based on your representation, we determine that section 552.108(a)(1) is generally applicable to the remaining information in Exhibit B. *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, however, that the information at issue contains a “Statutory Warning” and a “Notice of Suspension.” The department provided copies of these forms to the cited individual. You have not explained how releasing this information, which has already been seen by the defendant, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the statutory warning and notice of suspension may not be withheld under section 552.108.

As you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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

¹Section 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 Code § 552.101. This exception encompasses information that other statutes make confidential.

²We note that as a general rule, the exceptions to disclosure found in the Act do not apply to information that another statute makes public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

at 186-88. The department must release basic information 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*). With the exception of the statutory warnings, notices of suspension, and basic information, the department may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Gov't Code § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked information in Exhibit C that the department must withhold pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. We have

marked the information that the department must withhold pursuant to section 552.130 of the Government Code.

In summary: (1) the search warrants that have been filed with the court must be released pursuant to section 552.022(a)(17) of the Government Code; (2) the marked crash report must be released in its entirety pursuant to section 550.065(c)(4) of the Transportation Code; (3) except for the statutory warning, the notice of suspension, and basic information, which you state has already been released, the department may withhold the rest of Exhibit B under section 552.108(a)(1) of the Government Code; (4) we have marked information in Exhibit C that the department must withhold pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and common-law privacy; and (5) the department must withhold the information we have marked pursuant to section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 352019

Enc. Submitted documents

c: Requestor
(w/o enclosures)