



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 11, 2011

Ms. Jennifer C. Cohen  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-001

OR2011-02139

Dear Ms. Cohen:

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# 408901 (ORA# 10-2707 and ORA # 10-2795).

The Texas Department of Public Safety (the "department") received two requests for all information relating to a specified fatal traffic accident. You state you have released some information to the requestors. You claim portions of the submitted information are 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 representative sample of information.<sup>1</sup>

Initially, you acknowledge the department failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the department claims an exception to disclosure under section 552.108 of the Government Code, this section is discretionary in nature and protects a governmental body's interests, and may be waived. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, we find the department has waived its own claim under section 552.108. Nevertheless, the need of a governmental body, other than the agency seeking an open records decision, to withhold information under section 552.108 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). Because you inform us, and provide documentation showing, the Denton County District Attorney's Office (the "district attorney") objects to the release of the information at issue, we will consider whether the department may withhold the submitted information under section 552.108 on behalf of the district attorney. In addition, because your claims under sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider whether these exceptions are applicable to the submitted information.

Next, we note the submitted information contains a Texas Peace Officer's Crash Report form that appears 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 that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *Id.* § 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 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.* Here, each requestor has provided the department with at least two of the three required pieces of information. Thus, the requestors have a right of access to the Texas Peace Officer's Crash Report, which we have marked, pursuant to section 550.065(c)(4) of the Transportation Code. Although you seek to withhold this information under section 552.108 of the Government Code, the exceptions found in the Act generally do not apply to information made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Accordingly, the department must release the Texas Peace Officer's Crash Report in its entirety to the requestors pursuant to section 550.065(c)(4) of the Transportation Code.

Section 552.108(a)(1) 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 claiming section 552.108 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 provide a representation from the district attorney stating the requested information relates to a pending criminally negligent homicide prosecution and requesting the information be withheld. Based on the district attorney's representations, we conclude the release of the submitted information 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) (court delineates law enforcement interests present in active cases); *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

However, 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 basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-66. You state you have released information which you characterize as basic information. We note, however, basic information described in *Houston Chronicle* includes a detailed description of the offense, vehicles involved, description of the weather, and names of the investigating officers, even if that 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*). We further note basic information does not include Texas motor vehicle record information subject to section 552.130 of the Government Code. Accordingly, we determine the department must release a sufficient portion of the narrative to encompass a detailed description of the offense, vehicles involved, description of the weather, and the names of the investigating officers. The department may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code on behalf of the district attorney. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

In summary, the department must release the Texas Peace Officer's Crash Report in its entirety to the requestors pursuant to section 550.065(c)(4) of the Transportation Code. Except for basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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](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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 408901

Enc. Submitted documents

c: Requestor  
(w/o enclosures)