



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2011

Ms. Monica Perales Garcia  
Public Information Officer  
Office of the District Attorney  
49th Judicial District  
P.O. Box 1343  
Laredo, Texas 78042

OR2011-10740

Dear Ms. Garcia:

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# 424984.

The Webb County District Attorney's Office for the 49<sup>th</sup> Judicial District (the "district attorney") received a request for all information pertaining to a specified case. You state the district attorney will release some of the requested information. You claim that the remaining requested 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 the submitted information contains a CR-3 accident report form that is subject to section 550.065 of the Transportation Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 550.065, which provides that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* 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 pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(3) specific location of the accident. *Id.* § 550.065(c)(4). The requestor has not provided the district attorney with two of the three requisite pieces of information specified by the statute. Accordingly, the district attorney must withhold the submitted CR-3 accident report form under section 552.101 in conjunction with section 550.065(b) of the Government Code.

Next, we note the submitted information contains a fingerprint. Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Therefore, the district attorney must withhold the fingerprint we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

We note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides that information contained in a public court record is public information that cannot be withheld from disclosure unless the information is expressly confidential under other law. Gov’t Code § 552.022(a)(17). In this instance, the information we have marked consists of court-filed documents that are subject to section 552.022(a)(17). Although you raise section 552.108 for this information, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(17). *See Open Records Decision No. 177 at 3 (1977)* (statutory predecessor to section 552.108 subject to waiver). As such, the district attorney may not withhold the court-filed documents, which we have marked for release, on this basis. Because you raise no further exceptions against the disclosure of this information, it must be released. We will consider your arguments under section 552.108 with respect to the information that is not subject to section 552.022 of the Government Code.

Section 552.108 of the Government Code excepts from disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(c) This section does not except [from public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(1), (a)(4), (c).<sup>2</sup> A governmental body claiming section 552.108 must reasonably explain how and why 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 that the information at issue relates to an open and active criminal case. Based upon your representation and our review, we conclude that release of the information you have marked under section 552.108(a)(1) 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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the district attorney may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

You contend that the remaining information at issue constitutes information relating to the active case that was either prepared by or at the direction of the district attorney, or constitutes notes that include the mental impressions or legal reasoning of the prosecutor representing the state in the active case. *See* Gov't Code § 552.108(a)(4). Upon review, we agree some of the remaining information that you have marked under subsections 552.108(a)(4)(A) and (B), is information that was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. As such, the district attorney may withhold this information under subsections 552.108(a)(4)(A) and (B) of the Government Code. However, we find you have not demonstrated how one of the submitted documents you have marked under subsection 552.108(a)(4)(B) reflects the mental processes or legal reasoning of an attorney representing the state. Thus, we find you have not established that this information, which we have marked for release, is subject to subsection 552.108(a)(4)(B) and it may not be withheld on that basis.

We note portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130).

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<sup>2</sup>While you raise subsection 552.108(b)(3) in your brief, you have marked the information at issue and make arguments under subsection 552.108(a)(4) as opposed to subsection 552.108(b)(3); thus, we understand you to raise subsection 552.108(a)(4) for this information.

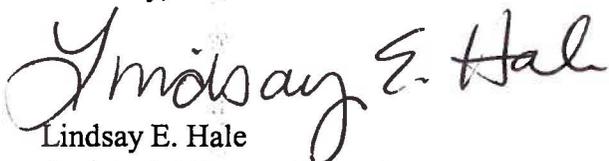
We determine the district attorney must withhold the information we have marked under section 552.130 of the Government Code.<sup>3</sup>

In summary, the district attorney must withhold the CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Government Code and the fingerprint we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The district attorney may withhold the information you have marked under section 552.108(a)(1) of the Government Code. With the exception of the information we have marked for release, the district attorney may withhold the information you have marked under subsections 552.108(a)(4)(A) and (B) of the Government Code. The district attorney must withhold the information we have marked under section 552.130 of the Government Code. The district attorney must release the remaining information.<sup>4</sup>

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Ref: ID# 424984

Enc. Submitted documents

c: Requestor  
(w/o enclosures)