



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2012

Mr. Nathan L. Brown
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2012-12785

Dear Mr. Brown:

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# 462430.

The City of El Paso (the "city") received a request for eight categories of information pertaining to a specified automobile accident involving a named individual. You state the city has released some information to the requestor, including among other items, the CR-3 accident report, the DIC-24 statutory warning, and basic information.¹ You claim the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. You have also provided a letter from the Office of the District Attorney, 34th Judicial District (the "district attorney") who claims that the information at issue is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note that the city has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold

¹We assume the basic information you have released is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c) (basic information about an arrested person, an arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). We understand the city has redacted driver's license numbers pursuant to section 552.130(c) of the Government Code and a social security number under section 552.147 of the Government Code.² We further understand the city has redacted a Texas license plate number as permitted by Open Records Decision No. 684 (2009).³ The city has also redacted home addresses and telephone numbers, dates of birth, a vehicle identification number, and the state of issuance of a driver's license. You do not assert, nor does our review of our records indicate, that the city is authorized to withhold any of this remaining redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information in this instance, we will address its public availability. In the future, the city should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant to statutory authority. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

Next, we note the submitted information contains a document that has been filed with a court. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the city and district attorney seek to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the court-filed document, which we have marked, under

²Section 552.130(c) allows a governmental body to redact the information described in section 552.130(a)(1) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *Id.* § 552.130(d), (e). Further, section 552.147 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. *Id.* § 552.147(b).

³Open Records Decision No. 684 permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2) of the Government Code, without requesting an attorney general decision.

section 552.103 or section 552.108. As you raise no further arguments against disclosure of this information, the city must release the marked court-filed document pursuant to section 552.022(a)(17) of the Government Code.

We next note the submitted information contains a CR-3 accident report form subject to section 550.065 of the Transportation Code. Section 552.101 of the Government Code exempts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes, such as section 550.065 of the Transportation Code. This section provides that, except as provided by subsection (c), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) of the Transportation Code, however, requires 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). In this instance, the requestor provided the city with the requisite pieces of information specified by the statute. Although you seek to withhold this information under section 552.108 of the Government Code, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act not applicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information).*

You also assert portions of the CR-3 crash report are confidential under section 552.130 of the Government Code. Section 552.130 provides information relating to motor vehicle title or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1). As noted above, a statutory right of access generally prevails over the Act’s general exceptions to disclosure. *See Open Records Decision Nos. 623 at 3, 613 at 4.* However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 550.065 of the Transportation Code and the confidentiality provided under section 552.130. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); *Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).*

In this instance, section 550.065 specifically provides access only to accident reports of the type at issue in this request, while section 552.130 generally excepts Texas motor vehicle record information maintained in any context. Thus, we conclude the access to accident reports provided under section 550.065 is more specific than the general confidentiality provided under section 552.130. Accordingly, the city may not withhold any portion of the

accident report form under section 552.130. Therefore, the city must release the submitted CR-3 accident report form in its entirety to the requestor pursuant to section 550.065(c)(4) of the Transportation Code.

You claim the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 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 state, and provide an affidavit from the district attorney demonstrating, that the remaining information relates to a pending prosecution. Based on this representation, we conclude release of this 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. 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).⁴

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 the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* ORD No. 127. We note basic information does not include information subject to section 552.130 of the Government Code. Accordingly, with the exception of the basic information, which you state has been released, the city may withhold the remaining submitted information under section 552.108(a)(1).⁵

In summary, the city must release the marked court-filed document pursuant to section 552.022(a)(17) of the Government Code and the entirety of the CR-3 accident report form pursuant to section 550.065(c)(4) of the Transportation Code. Except for the DIC-24 form and basic information, which you state has been released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

⁴The information at issue includes a DIC-24 statutory warning. As noted above, the city states it has released the DIC-24 statutory warning with a Texas driver’s license number redacted pursuant to section 552.130(c) of the Government Code.

⁵As our ruling is dispositive for this information, we need not address your remaining argument against disclosure. Furthermore, we need not address the district attorney’s remaining argument under section 552.103 of the Government Code except to note that the basic information held to be public in *Houston Chronicle* is generally not excepted from disclosure under section 552.103. *See* Open Records Decision No. 597 (1991).

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, toll free at (888) 672-6787.

Sincerely,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 462430

Enc. Submitted documents

c: Requestor
(w/o enclosures)