



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2014

Ms. Elizabeth Lutton
Legal Advisor
Dallas County Sheriff's Department
133 North Riverfront Boulevard, LB-31
Dallas, Texas 75207-4313

OR2014-06129

Dear Ms. Lutton:

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# 519556.

The Dallas County Sheriff's Department (the "sheriff's department") received a request for information related to a specified auto accident. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.1085 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the sheriff's department's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The sheriff's department received the request for information on January 13, 2014. We understand the sheriff's department was closed on January 20, 2014 in observance of Martin Luther King, Jr. Day. We note this office does not count the date the request was received or holidays for purposes of calculating

a governmental body's deadlines under the Act. Thus, the sheriff's department's ten-business-day deadline and fifteen-business-day deadline were January 28, 2014, and February 4, 2014, respectively. However, the envelope in which the sheriff's department submitted its request for a ruling bears a postmark of February 6, 2014. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, the sheriff's department failed to comply with the procedural requirements mandated by section 552.301.

Although the sheriff's department seeks to withhold the submitted information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interest and may be waived. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); *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. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Thus, the sheriff's department has waived its claims under sections 552.103 and 552.108. Nevertheless, the 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 under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). In this instance, the Dallas County District Attorney's Office (the "district attorney's office") asserts the information at issue should be withheld under section 552.108 of the Government Code. Therefore, we will consider whether the information at issue may be withheld on behalf of the district attorney's office under section 552.108. You also raise sections 552.101 and 552.1085 of the Government Code for portions of the submitted information. Because sections 552.101 and 552.1085 can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the information at issue.

Next, we note the submitted information contains a CR-3 crash report form 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), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides at least two of the following three pieces 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. *Id.* § 550.065(c)(4). We note, and you acknowledge, the requestor has provided the sheriff's department with the required information specified by the statute. Accordingly, we agree the sheriff's department must release the submitted CR-3 accident report form in its entirety pursuant to section 550.065(c)(4) of the Transportation Code to the requestor.

Section 552.108(a) 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). Generally, 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).

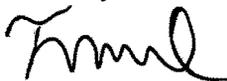
The district attorney’s office objects to the release of the remaining information because release would interfere with a pending criminal investigation and prosecution. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based upon this representation, we find release of the remaining information would interfere with the detection, investigation, or prosecution of crime. Accordingly, the sheriff’s department may withhold the remaining information on behalf of the district attorney’s office under section 552.108(a)(1) of the Government Code.¹

In summary, the sheriff’s department must release the submitted CR-3 accident report form in its entirety pursuant to section 550.065(c)(4) of the Transportation Code to the requestor. The sheriff’s department may withhold the remaining information on behalf of the district attorney’s office 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

¹As our ruling is dispositive, we do not address your remaining arguments against disclosure under sections 552.101 and 552.1085 of the Government Code.

Ref: ID# 519556

Enc. Submitted documents

c: Requestor
(w/o enclosures)