



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 16, 2015

Ms. Debbie F. Harrison
Assistant District Attorney
Civil Division
Collin County
2100 Bloomdale Road, Suite 100
McKinney, Texas 75701

OR2015-07436

Dear Ms. Harrison:

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# 562212.

The Collin County District Attorney's Office (the "district attorney's office") received a request for any investigative documents and videos pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) provides, except as provided by subsection (c) or subsection (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) 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). In this instance, the requestor has provided the district attorney's office with the requisite pieces of information specified by the statute.

Although you seek to withhold this information under sections 552.103, 552.108, 552.111, and 552.130 of the Government Code, we note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because sections 552.103, 552.108, and 552.111 are general exceptions to disclosure under the Act, the requestor's statutory access under section 550.065 of the Transportation Code prevails, and the department may not withhold information subject to those exceptions from the CR-3 accident report. 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 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). In this instance, section 550.065 specifically provides access to only accident reports of the type at issue, while section 552.130 generally excepts motor vehicle record information maintained in any context. Thus, we conclude the access to an accident report provided under section 550.065 is more specific than the general confidentiality provided under section 552.130. Consequently, the district attorney's office may not withhold any portion of the submitted CR-3 accident report under section 552.130. Therefore, the district attorney's office must release the submitted CR-3 accident report in its entirety to the requestor pursuant to section 550.065(c)(4) of the Transportation Code.

Next, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[.]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The district attorney's office seeks to withhold this information under sections 552.103, 552.108, and the attorney work product privilege encompassed by section 552.111 of the Government Code; however, these sections are discretionary exceptions to disclosure that protect a governmental body's interests 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. 677 at 8-10 (2002) (governmental body may waive attorney work product privilege under section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district attorney's office may not withhold the court-filed documents, which we have marked, under section 552.103,

section 552.108, or the attorney work product privilege encompassed by section 552.111 of the Government Code. We note the attorney work product privilege is found at rule 192.5 of the Texas Rules of Civil Procedure, which has been held to be other law within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, those rules are applicable only to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. Thus, because the information at issue pertains to a criminal case, rule 192.5 is not applicable. Therefore, the district attorney’s office may not withhold the information subject to section 552.022(a)(17) on the basis of the work product privilege in Texas Rule of Civil Procedure 192.5. However, as section 552.130 of the Government Code can make information confidential for purposes of section 552.022, we will consider the applicability of this exception to the information subject to section 552.022. Further, we will address the district attorney’s office’s arguments against disclosure of the remaining information.

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 state that release of the submitted information will interfere with a pending criminal investigation. We note, however, that the information at issue includes a DIC-24 statutory warning and a citation. The documents were provided to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the DIC-24 form and citation may not be withheld under section 552.108(a)(1). However, based upon your representations, we conclude that the release of the remaining 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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information protected by section 552.130 of the Government Code. *See id.* Accordingly, with the exception of basic information and the DIC-24 form and citation,

the district attorney's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

You argue the remaining information is subject to section 552.111 of the Government Code. Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This section encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as

(1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party’s representatives or among a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5(a). A governmental body seeking to withhold information under this exception bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party’s representative. *Id.*; ORD 677 at 6-8. In order for this office to conclude the information was made or developed in anticipation of litigation, we must be satisfied that

a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

Nat’l Tank Co. v. Brotherton, 851 S.W.2d 193, 207 (Tex. 1993). A “substantial chance” of litigation does not mean a statistical probability, but rather “that litigation is more than merely an abstract possibility or unwarranted fear.” *Id.* at 204; ORD 677 at 7.

¹ As our ruling is dispositive, we need address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

The work product doctrine under section 552.111 of the Government Code is applicable to litigation files in criminal and civil litigation. *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994); see *U.S. v. Nobles*, 422 U.S. 225, 236 (1975). In the *Curry* decision, the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." 873 S.W.2d at 380. Accordingly, if a requestor seeks an attorney's entire litigation file, and a governmental body demonstrates that the file was created in anticipation of litigation, we will presume the entire file is excepted from disclosure under the attorney work product aspect of section 552.111. ORD 647 at 5; see *Nat'l Union*, 863 S.W.2d at 461 (organization of attorney's litigation file necessarily reflects attorney's thought processes).

You contend the instant request for information is a request for the entire prosecution file for a criminal case. However, the request is for investigative documents and videos, and you state you submitted for our review the information you "considered 'investigative documents' which is the bulk of the documents in the file," rather than the entire litigation file. Thus, we conclude that the present request is not a request for the entire prosecution file. As a result, the district attorney's office may not withhold the remaining requested information under *Curry*.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130(a)(1). Accordingly, the district attorney's office must withhold the motor vehicle record information we have marked in the citation under section 552.130 of the Government Code.

In summary, the district attorney's office must release the submitted CR-3 accident form in its entirety to the requestor. The district attorney's office must release the court-filed documents we have marked under section 552.022(a)(17) of the Government Code. With the exception of basic information and the DIC-24 form and citation, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the citation, the district attorney's office must withhold the information we have marked under section 552.130 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,

A handwritten signature in cursive script that reads "Ellen Webking". The signature is written in black ink and is positioned above the typed name.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 562212

Enc. Submitted documents

c: Requestor
(w/o enclosures)