



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 21, 2015

Ms. Charla Thomas  
Deputy City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2015-14799

Dear Ms. Thomas:

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# 572153.

The Temple Police Department (the "department") received a request for all pictures, witness statements, diagrams, or drawings related to a specified automotive accident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1085 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note the requestor seeks only pictures, witness statements, diagrams, or drawings related to the specified accident. You have also submitted the incident report related to the specified accident. We find the incident report is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

Section 552.108 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[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the information at issue pertains to an ongoing criminal investigation. However, the requestor asserts that any criminal investigations pertaining to the information at issue have been completed. Whether the incident at issue relates to an ongoing criminal investigation is a question of fact. Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* ORD 552 at 4. Based on your representation that the information at issue relates to an ongoing criminal investigation, we find that release of the responsive 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). Based on your representation and our review of the information, we find section 552.108(a)(1) is applicable to the submitted information.

We note the requestor also states he represents an individual who the requestor contends has a right of access to the requested information pursuant to section 552.023 of the Government Code. Section 552.023 provides, in pertinent part, that “[a] person or a person’s authorized representative has a special right of access, beyond that of the general public, to information held by a governmental body . . . that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a). We note, however, a governmental body may assert as grounds for denial of access other provisions of the Act or other law that is not intended to protect the person’s privacy interests. *See id.* § 552.023(b). In this instance, we have determined section 552.108 of the Government Code is applicable to the information at issue. This exception is not intended to protect the privacy interests of any individuals; rather, it protects the governmental body’s interests. *See id.* § 552.108 (section 552.108 intended to protect criminal law enforcement and prosecutorial interests). Thus, section 552.023 does not provide a special right of access to information excepted from disclosure under section 552.108. Consequently, section 552.023 does not provide the requestor a special right of access to the information at issue. Therefore, the department may withhold the responsive information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the responsive information.

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](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 black ink, appearing to read 'Tim Neal', with a stylized, cursive script.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 572153

Enc. Submitted documents

c: Requestor  
(w/o enclosures)