



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 14, 2015

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
County of Lubbock
Office of the Criminal District Attorney
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2015-16822

Dear Ms. Clarke:

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# 581400.

The Lubbock County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident. You state the district attorney's office has made some of the requested information available to the requestor. You claim the submitted 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Act of June 1, 2015, 84th Leg., R.S., H.B. 2633, § 1 (to be codified at Transp. Code § 550.065(a)(1)). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. Transp.

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

Code §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). Act of June 1, 2015, 84th Leg., R.S., H.B. 2633, § 1 (to be codified at Transp. Code § 550.065(c), (c-1)). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. Gov't Code § 550.065(c).

In this instance, the requestor may be a person listed under section 550.065(c). Although the district attorney's office asserts section 552.108 to withhold the information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, 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 section 552.108 is a general exception under the Act, if the requestor is a person listed under 550.065(c), then her statutory right of access under section 550.065(c) prevails and the district attorney's office may not withhold the information under section 552.108 of the Government Code. In that case, the district attorney's office must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code.

However, if the requestor is not a person listed under section 550.065(c), then the submitted accident report is confidential under section 550.065(b), and the district attorney's office must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the district attorney's office to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, if the requestor is not person listed under section 550.065(c), then she has a right of access to the redacted accident report. As noted above, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, ORD. 613 at 4, 451. Because section 552.108 is a general exception under the Act, if the requestor not a person listed under section 550.065(c), then her statutory access under section 550.065(c-1) prevails and the district attorney's office may not withhold the information under section 552.108 of the Government Code. Thus, if the requestor is not a person listed under section 550.065(c), then the district attorney's office must release the redacted accident report to the requestor pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information relates to a closed case that

did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the remaining information.

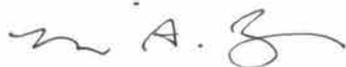
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, if the requestor is a person listed under section 550.065(c) of the Transportation Code, then the district attorney's office must release the accident report to her pursuant to section 550.065(c) of the Transportation Code. If the requestor is not a person listed under section 550.065(c) of the Transportation Code, then the district attorney's office must withhold the accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, but must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code. In either case, with the exception of basic information, which you state you have released, the district attorney's office may withhold the remaining information under section 552.108(a)(2) 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 581400

Enc. Submitted documents

c: Requestor
(w/o enclosures)