



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 28, 2016

Mr. Scott A. Durfee  
Assistant General Counsel  
Harris County District Attorney's Office  
1201 Franklin, Suite 600  
Houston, Texas 77002

OR2016-14670

Dear Mr. Durfee:

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# 616442.

The Harris County District Attorney's Office (the "district attorney's office") received a request for all documents pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the information at issue was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-25568 (2015). In that ruling, we determined the district attorney's office may withhold the information at issue under section 552.108(a)(1) of the Government Code. While you previously represented the information at issue related to an open investigation subject to section 552.108(a)(1), you now inform us the investigation is concluded and claim section 552.108(a)(2) of the Government Code. Thus, we find the circumstances have changed and the district attorney's office may not rely on Open Records Letter

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

No. 2015-25568 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001). Accordingly, we will consider your argument under section 552.108(a)(2) for the information previously ruled upon in Open Records Letter No. 2015-25568.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” 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. 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. *Id.* §§ 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). *Id.* § 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. *Id.* § 550.065(c).

The submitted information includes CR-3 reports. In this instance, the requestor is not a person listed under section 550.065(c) of the Transportation Code. Thus, the submitted accident reports are confidential under section 550.065(b) of the Transportation Code, and must be withheld under section 552.101 of the Government Code. However, section 550.065(c-1) of the Transportation Code 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, the requestor has a right of access to the redacted accident reports. Although you assert section 552.108 of the Government Code to withhold the information at issue, we note 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, the requestor’s statutory access under section 550.065(c-1) prevails and the district attorney’s office may not withhold the information at issue under section 552.108. Accordingly, the district attorney’s office must release the redacted accident reports pursuant to section 550.065(c-1).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than 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.; see also id.* § 552.301(e)(1)(A). You inform us the remaining information pertains to a criminal investigation by the district attorney’s office that concluded in a result other than conviction or deferred adjudication.

Based on your representation and our review, we find section 552.108(a)(2) is applicable to the remaining information.

However, section 552.108(a)(2) of the Government Code 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the district attorney's office may withhold the remaining information from disclosure under section 552.108(a)(2).<sup>2</sup>

In summary, the submitted accident reports are confidential under section 550.065(b) of the Transportation Code, but the district attorney's office must release the redacted accident reports pursuant to section 550.065(c-1) of the Transportation Code. With the exception of basic information, which must be released, the district attorney's office may withhold the remaining information from disclosure 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](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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/akg

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 616442

Enc. Submitted documents

c: Requestor  
(w/o enclosures)