



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 6, 2016

Mr. Oscar G. Gabaldón, Jr.  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2016-15277

Dear Mr. Gabaldon:

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# 617735 (City's Case No. 16-1026-7400).

The El Paso Police Department (the "department") received a request for all documents related to a specified motor vehicle accident. We understand you will withhold certain dates of birth pursuant to the previous determination issued in Open Records Letter No. 2016-10113 (2016).<sup>1</sup> You state the department has released some information to the requestor, including the CR-3 crash report. *See* Transp. Code § 550.065(c)(4) (officer's accident report). You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1085 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a search warrant and an order for assistance in execution of search warrant, which are subject to section 552.022 of the

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<sup>1</sup>Open Records Letter No. 2016-10113 is a previous determination issued to the department authorizing it to withhold certain dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy, you have not submitted arguments explaining how these doctrines apply in this instance. Therefore, we assume you have withdrawn these claims. *See* Gov't Code §§ 552.301, .302.

Government Code. Section 552.022(a)(17) provides for the required public disclosure of “information that is also contained in a public court record” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code, this is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 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). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Therefore, the search warrant and order for assistance in execution of search warrant may not be withheld under section 552.108 of the Government Code. We also note common-law privacy is not applicable to information contained in public court records. *See Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication); *see also Cox Broadcasting Corp. v. Cohn*, 420 U.S. 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (law cannot recall information once in public domain). Accordingly, no portion of the information subject to section 552.022 of the Government Code may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure for the search warrant and order for assistance in execution of search warrant, the department must release these documents. However, we will consider the arguments against disclosure of the remaining information not subject to section 552.022.

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(a)(1) must 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 the remaining information relates to an active investigation or prosecution. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *See Houston Chronicle Publ’g 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) (court delineates law enforcement interests that are present in active cases). We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The DIC-24 and DIC-25 forms have previously been provided to the arrestee. Because copies of these documents have previously been released to the arrestee, we find you have not shown the release of these documents will interfere with the detection, investigation, or prosecution of crime, and these documents may not be withheld under section 552.108(a)(1). *See* Gov’t Code § 552.108(a)(1). Because the remaining information at issue has not been previously released, we conclude release of this information would

interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is applicable to the remaining information at issue.

However, we note, and you acknowledge, 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Further, in Open Records Decision No. 649 (1996), this office concluded information contained in a computer-aided dispatch ("CAD") report is substantially the same as basic information and, thus, is not excepted from public disclosure under section 552.108. See ORD 649 at 3; see also Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). Thus, with the exception of the information subject to section 552.022(a)(17), the DIC-24 and DIC-25 forms, and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>4</sup> See Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must release the search warrant and order for assistance in execution of search warrant pursuant to section 552.022(a)(17) of the Government Code. With the exception of the DIC-24 and DIC-25 forms and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. However, in releasing the DIC-24 and DIC-25 forms, the department 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.

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<sup>3</sup>As our ruling is dispositive for this information, we need not consider your remaining argument against its disclosure.

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480(1987), 470 (1987).

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 'J. Behnke', with a long horizontal stroke extending to the right.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/dm

Ref: ID# 617735

Enc. Submitted documents

c: Requestor  
(w/o enclosures)