



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2010

Mr. Robert Massey
Assistant City Attorney II
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2010-03886

Dear Mr. Massey:

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# 373081 (City ID# 005).

The Wichita Falls Police Department (the "department") received a request for information related to two specified case numbers. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have redacted information from the submitted report pursuant to section 552.147 of the Government Code. Gov't Code § 552.147(b). Although section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act, this section does not apply to the social security number of a deceased individual. *Id.* Therefore, the department may not withhold the social security numbers you have marked belonging to the deceased individuals under section 552.147 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Gov't Code § 552.101. This exception encompasses section 550.065 of the Transportation Code, which provides in relevant part as follows:

(a) This section applies only to information that is held by the [Texas Department of Transportation (“TxDOT”)]¹ or another governmental entity and relates to a motor vehicle accident reported under this chapter or Section 601.004 [of the Transportation Code], including accident report information compiled under Section 201.805 [of the Transportation Code][.]²

(b) Except as provided by Subsection (c) or (e), the information is privileged and for the confidential use of:

(1) [TxDOT]; and

(2) an agency of the United States, this state, or a local government of this state that has use for the information for accident prevention purposes.

(c) On written request and payment of any required fee, [TxDOT] or the governmental entity shall release the information to:

...

(4) a person who provides the department or governmental entity with two or more of the following:

(A) the date of the accident;

(B) the specific address or the highway or street where the accident occurred; or

(C) the name of any person involved in the accident.

...

(e) In addition to the information required to be released under Subsection (c), the department may release:

¹Transp. Code § 550.0601 (“department” means the Texas Department of Transportation).

²We note the 81st Legislature renumbered section 201.805 to section 201.806 of the Transportation Code. Act of May 20, 2009, 81st Leg., ch. 87, § 27.001(90), 2009 Tex. Gen. Laws 208, 381.

(1) information relating to motor vehicle accidents that the department compiles under Section 201.805, as added by Chapter 1407 (S.B. 766), Acts of the 80th Legislature, Regular Session, 2007[.]³

...

(f) The department:

(1) may not release under Subsection (e) information that:

...

(B) would allow a person to satisfy the requirements of Subsection (c)(4) for the release of information for a specific motor vehicle accident[.]

Transp. Code § 550.065(a)-(c), (e)-(f) (footnotes added). You claim the submitted CR-3 accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code and the incident analysis report log are confidential under section 550.065 of the Transportation Code. *See id.* § 550.064 (officer's accident report). Under section 550.065(c)(4), TxDOT or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In the present request, the requestor has not provided the department with two of the three pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-3 accident report forms from public disclosure under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

You also seek to withhold the remaining information under section 550.065(f) of the Transportation Code. This information consists of an incident report, impound report, and records related to the release of property. You state release of the information at issue would allow a person to satisfy the requirements of section 550.065(c)(4) as prohibited by section 550.065(f)(1)(B). Section 550.065(f) refers to the information addressed in section 550.065(e), which is the information in the database referred to as the Crash Records Information System ("CRIS"). *See id.* § 550.065(e), (f); *see also* Senate Comm. on Transportation and Homeland Security, Bill Analysis, Tex. S.B. 375, 81st Leg., R.S. (2009). TxDOT, not the department, maintains CRIS as required by section 201.806 of the Transportation Code. *See* Transp. Code § 201.806. Thus, section 550.065(f)(1)(B) addresses

³As previously noted, this section has been renumbered to section 201.806 of the Transportation Code. *Id.*

only TxDOT and applies only to TxDOT. Consequently, the department's incident report, impound reports, and property records are not made confidential by section 550.065(f)(1)(B). Thus, the department may not withhold the information at issue under section 552.101.

We note some of the remaining information is subject to section 552.136 of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."⁴ Gov't Code § 552.136(b). We note, however, that the purpose of section 552.136 is to protect the privacy interests of individuals, and because the right of privacy lapses at death, the credit card numbers of a deceased individual may not be withheld under section 552.136. *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (Texas does not recognize relational or derivative right of privacy). We also note that the requestor may have a right of access to some of the marked information if she has an interest in the accounts at issue. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information). Therefore, if the marked account numbers pertain solely to the accounts of a deceased individual or the requestor has a right of access, they are not excepted from disclosure under section 552.136 and must be released. However, if the marked account numbers pertain to accounts in which a living person, who is not the requestor, has an interest, they must be withheld under section 552.136 of the Government Code.⁵

In summary, the department must withhold the submitted CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The department must also withhold the credit card numbers we have marked pursuant to section 552.136 of the Government Code if a living person, who is not the requestor, has an interest in them. The remaining information must be released.⁶

⁴The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁶We note that this requestor has a special right of access to some of the information being released that would otherwise be confidential with regard to the general public. *See* Gov't Code § 552.023(a). Therefore, if the department receives another request for this information from a person who does not have a special right of access to this information, the department should resubmit this same information and request another decision from this office. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'T Wilcox', written in a cursive style.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 373081

Enc. Submitted documents

c: Requestor
(w/o enclosures)