



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2014

Ms. Lauren K. Ferris
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-06872

Dear Ms. Ferris:

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# 520650.

The City of El Paso (the "city") received a request for information pertaining to a specified accident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information consists of a completed investigation made by or for the city, which is subject to section 552.022(a)(1) of the Government Code. Pursuant to section 552.022(a)(1), completed investigations, reports, and evaluations are expressly public unless they are either excepted under section 552.108 of the Government Code or confidential under the Act or other law. Gov't Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure and does not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 does not make information confidential for the purposes of section 552.022. Therefore, the city may not withhold the

submitted information under section 552.103 of the Government Code. However, because sections 552.101, 552.117, 552.130, and 552.136 of the Government Code make information confidential under the Act, we will address the applicability of these exceptions.¹

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”)]² 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][.]

(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 [TxDOT] 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

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

²Transp. Code § 550.0601 (“department” means the Texas Department of Transportation).

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

...

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

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

...

(f) [TxDOT]:

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

(A) is personal information, as defined by Section 730.003; or

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

(2) shall withhold or redact [certain enumerated categories] of information[.]

Transp. Code § 550.065(a)-(c), (e)-(f) (footnote added). The submitted information contains a CR-3 accident report form completed pursuant to chapter 550 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.* § 550.065(c)(4). In this instance, the requestor has provided the city with two of the requisite pieces of information specified by the statute. You seek to withhold portions of the information at issue pursuant section 552.101 in conjunction with section 550.065(f) of the Transportation Code. 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* Transp. Code § 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 city, maintains CRIS as required by section 201.806 of the Transportation Code. *See* Transp. Code § 201.806. Thus, section 550.065(f) addresses only TxDOT and applies only to information maintained by TxDOT. Consequently, because the submitted information is maintained by the city, section 550.065(f) does not apply to this information. Thus, the city may not withhold any of the submitted information under

section 552.101 on this basis. Accordingly, the city must release the submitted CR-3 report in its entirety to the requestor pursuant to section 550.065(c)(4) of the Transportation Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has determined personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).³

³Regardless of the applicability of section 552.117 of the Government Code, we note 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. *See* Gov't Code § 552.147(b).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, 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. Gov't Code § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.⁴

Section 552.136 provides, "[n]otwithstanding any other provision of [the Act], 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.⁵

In summary, the city must release the submitted CR-3 report in its entirety to the requestor pursuant to section 550.065(c)(4) of the Transportation Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. The city must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The city must release the remaining 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, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

⁴We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

⁵Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

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 cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 520650

Enc. Submitted documents

cc: Requestor
(w/o enclosures)