



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2014

Mr. Frank J. Garza
Counsel for the City of Rockwall
Davidson, Troilo, Ream, & Garza, PC
7550 West Interstate 10, Suite 800
San Antonio, Texas 78229-5815

OR2014-12556

Dear Mr. Garza:

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# 529804.

The Rockwall Police Department (the "department"), which you represent, received a request for information pertaining to a specified traffic accident. You claim the requested information is exempted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes two CR-3 reports completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). However, section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. In this instance, the requestor has provided the department with the required information pursuant to section 550.065(c)(4). Although the department seeks to withhold this information under section 552.103 of the Government Code, we note a statutory right of access generally prevails over the exceptions

to public disclosure under the Act. *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). Accordingly, the submitted CR-3 reports must be released to this requestor pursuant to section 550.065(c)(4) of the Transportation Code.

Next, you inform us the remaining information consists of a completed investigation.¹ Section 552.022(a)(1) of the Government Code provides in relevant part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). You assert this information is excepted from release under section 552.103 of the Government Code. However, this section is discretionary and does not make information confidential under the Act. *See 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 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Therefore, the department may not withhold the information at issue under section 552.103 of the Government Code. However, because sections 552.101, 552.1175, and 552.130 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the remaining information.²

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects

¹Pursuant to section 552.303 of the Government Code, this office asked the department to provide additional information regarding whether, at the time the department received the request for information, the department's investigation of the incident at issue was ongoing or complete. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found 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. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note the requestor has a special right of access to his client's information that would ordinarily be withheld to protect the individual's privacy interests. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department may not withhold the requestor's client's information under section 552.101 in conjunction with common-law privacy. However, upon review, we find the information we have marked, which does not pertain to the requestor's client, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Upon review, we find one of the submitted video recordings contains information pertaining to a peace officer subject to section 552.1175. Thus, to the extent the peace officer at issue elects to restrict access to her personal information in accordance with section 552.1175(b), the department must withhold the information we have indicated under section 552.1175 of the Government Code. However, if the peace officer whose information is at issue does not elect to restrict access to her personal information in accordance with section 552.1175(b), her information may not be withheld under section 552.1175 of the Government Code.

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. *See id.* § 552.130(a). We note the submitted audio recordings, video recordings, and photographs reveal the license plate number and state of issuance of the requestor's client's vehicle. The requestor has a right of access to his client's license plate information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a). Accordingly, the department may not withhold the requestor's client's license plate information under section 552.130. However, we find the submitted audio recordings, video recordings, and photographs contain license plate and driver's license numbers and states of issuance, as well as images of license plates, that do not pertain to the requestor's client. Thus, the department must withhold the motor vehicle record information contained in the submitted audio recordings, video recordings, and photographs that does not pertain to the requestor's client under section 552.130 of the Government Code. Additionally, we find the department must withhold the motor vehicle record information we have marked in the remaining submitted documents under section 552.130 of the Government Code.

In summary, the department must release the submitted CR-3 reports to this requestor pursuant to section 550.065(c)(4) of the Transportation Code. The department must withhold the information we have marked, which does not pertain to the requestor's client, under section 552.101 of the Government Code in conjunction with common-law privacy. The department also must withhold the motor vehicle record information contained in the submitted audio recordings, video recordings, and photographs that does not pertain to the requestor's client under section 552.130 of the Government Code. Additionally, the department must withhold the motor vehicle record information we have marked in the submitted documents under section 552.130 of the Government Code. Finally, to the extent the peace officer at issue elects to restrict access to her personal information in accordance with section 552.1175(b), the department must withhold the information we have indicated under section 552.1175 of the Government Code. The remaining information must be released.³

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

³We note the requestor has a special right of access to some of the information being released in this instance pursuant to section 552.023 of the Government Code. *See Gov't Code* § 552.023(a). Therefore, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.

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 "Lee Seidlits", written in a cursive style.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 529804

Enc. Submitted documents

c: Requestor
(w/o enclosures)