



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2014

Mr. L. Brian Narvaez
Counsel for the City of Eagle Pass
Langley & Banack, Inc.
401 Quarry Street
Eagle Pass, Texas 78852

OR2014-14958

Dear Mr. Narvaez:

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# 534101.

The Eagle Pass Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You state the department will release Exhibit B, which contains a CR-3 accident report form. *See* Transp. Code § 550.065(c)(4), (d) (officer's accident report must be released to person who provides two of the following three pieces of information: date of accident, name of any person involved in accident, specific location of accident). You claim the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-10574 (2014). In that ruling, we determined the department failed to comply with the procedural requirements of section 552.301(b) of the Government, and, thus, the department waived its claim under section 552.108(a)(1) of the Government Code. Next, we found the department must withhold the criminal history record information ("CHRI") under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. Finally,

we determined the department must release the remaining information, in part because the requestor had a right of access to portions of the submitted information.

First, as to the CHRI at issue in the previous ruling, there is no indication the law, facts, or circumstances on which the prior ruling was based have changed as to such information. Thus, with regard to the CHRI at issue in the previous ruling, the department must continue to rely on Open Records Letter No. 2014-10574 as a previous determination and withhold that information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is, or is not excepted from disclosure). Next, with regard to the information that was previously released irrespective of the previous requestor's right of access, we note the Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Although you now claim the previously released information at issue is excepted from disclosure under section 552.108 of the Government Code, we note section 552.108 does not make information confidential, is a discretionary exception to disclosure that protects a governmental body's interests, and may be waived. *See* Open Records Decision No. 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the department has waived the claim under section 552.108 and may not withhold any of the submitted information on this basis. As you do not claim the release of the previously released information at issue is expressly prohibited by law or otherwise confidential by law, the department must release the previously released information at issue. Finally, we note the present requestor does not have a right of access to any of the remaining submitted information. Thus, with respect to the information previously released in accordance with the previous requestor's right of access, we find circumstances have changed. *See id.* Therefore, we will address your remaining arguments against disclosure of that information.

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 section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless

individual consents to disclosure). Upon review, we find the department must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government 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 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). Upon review, we find the information we have marked 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 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code 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 department must withhold the insurance policy number you have marked under section 552.136 of the Government Code.

In summary, the department must withhold the CHRI contained in the submitted information in accordance with Open Records Letter No. 2014-10574. Additionally, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and common-law privacy. The department must withhold the motor vehicle record information you have marked, in addition

the information we have marked, under section 552.130 of the Government Code. The department must withhold the insurance policy number you have marked under section 552.136 of the Government Code. The remaining information must be released.¹

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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 534101

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the information being released in this instance contains social security numbers. 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 requesting a decision from this office under the Act. Gov't Code § 552.147(b).