



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 31, 2015

Ms. Alexis G. Allen
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2015-27322

Dear Ms. Allen:

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# 592720 (Lancaster Reference No. 73803).

The Lancaster Police Department (the "department"), which you represent, received a request for information pertaining to a specified accident. The department states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted 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 information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1)). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c). The requestor is not a person listed under section 550.065(c). Thus, the submitted CR-3 accident report is confidential under

section 550.065(b), and the department must withhold it under section 552.101 of the Government Code.¹

Section 552.101 of the Government Code 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. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find some of the remaining information, which 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 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* Gov't Code § 552.130. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

The submitted audio recording also contains audible license plate numbers that are subject to section 552.130. The department seeks to withhold the recording in its entirety under section 552.130 because the department states it lacks the technical capability to redact that information from the recording. Nevertheless, because the department had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the department has the capacity to produce a copy of only the non-confidential portions of it. Therefore, the department must withhold the audible license plate numbers in the submitted audio recording under section 552.130 of the Government Code, but may not withhold any of the remaining information in the recording on that ground.

The submitted information contains an insurance policy number. Section 552.136(b) of the Government Code provides, “[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.”² Gov't Code § 552.136(b). This

¹We note the department informs us it has released the redacted accident report pursuant to section 550.065(c-1) of the Government Code. *See* Transp. Code § 550.065(c-1).

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

To conclude, the department must withhold the following: (1) the submitted CR-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the information we have marked and the audible license plate numbers in the submitted recording under section 552.130 of the Government Code; and (4) the information we have marked under section 552.136 of the Government Code. The department 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sdk

Ref: ID# 592720

Enc. Submitted documents

c: Requestor
(w/o enclosures)