



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 6, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2009-02954

Dear Ms. Sandoval-Walker:

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# 336795.

The El Paso Police Department (the "department") received two requests from the same requestor for information related to accidents involving a named individual. You state that you have released a redacted copy of the Complaint and Crash Report responsive to the first request. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that the information responsive to one of the requests, for the crash that occurred on February 14, 2008, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-00573 (2009). Although you seek to rely on Open Records Letter No. 2009-00573 as a previous determination, we note that the governmental body involved in that ruling was the City of El Paso. Because the instant request for information was received by a different governmental body, Open Records Letter No. 2009-00573 cannot be relied on as a previous determination. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address your arguments for this and the other requested information.

Next, we note that the submitted information includes an ST-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). 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. Section 552.101 encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the 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. Transp. Code § 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. *Id.* Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under the Act. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). In this instance, the requestor has provided the required information. Accordingly, the department must release the ST-3 accident report, which we have marked, in its entirety pursuant to section 550.065(c).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. We note that section 552.130 does not apply to out-of-state motor vehicle record

information. We also note that the purpose of section 552.130 is to protect the privacy interests of individuals. Since the right of privacy lapses at death, Texas motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. See *Moore v. Charles B. Pierce Film Enterprises, Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (Texas does not recognize relational or derivative right of privacy); see also Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, the department must release the Texas motor vehicle information that you have marked that pertains to the deceased individual. The department must withhold the remaining Texas motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130. The department must also withhold the Texas motor vehicle record information of living individuals contained in the submitted videos pursuant to section 552.130 of the Government Code. If the department lacks the technical capability to redact the information subject to section 552.130 in the submitted videos, the department must withhold the videos in their entirety.

We next address your assertion that some of the remaining information is excepted under section 552.147 of the Government Code, which provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. We agree that the department may withhold the social security numbers contained in the submitted information under section 552.147 of the Government Code.<sup>1</sup>

In summary, the department must release the ST-3 report that we have marked under section 550.065 of the Transportation Code. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold the Texas motor vehicle information you have marked, in addition to the information we have marked under section 552.130 of the Government Code, if a living individual has an interest in it. The department may withhold the social security numbers contained in the submitted information under section 552.147 of the Government Code. The remaining information must be released.

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](http://www.oag.state.tx.us/open/index_orl.php).

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<sup>1</sup>We note that 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.

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 at (512) 475-2497.

Sincerely,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/eeg

Ref: ID# 336795

Enc. Submitted documents

c: Requestor  
(w/o enclosures)