



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 19, 2010

Mr. Charles Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-03921

Dear Mr. Weir:

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# 373155 (COSA File No. 2009-4829).

The San Antonio Police Department (the "department") received a request for Case No. 90-560390 involving a named individual. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information contains an accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064. 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 550.065 of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. 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. *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. *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 accident report, which we have marked, to this requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

Next, we note that some of the remaining requested information was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2009-14188 (2009). In that ruling, we determined that the information at issue was excepted from disclosure under sections 552.108 and 552.130 of the Government Code. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the department may rely on Open Records Letter No. 2009-14188 as a previous determination and continue to treat the previously ruled upon 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent that the remaining submitted information is not the precise information previously ruled on, we will address your arguments against disclosure.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not state the submitted information relates to an ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Therefore, you have not met your burden under section 552.108(a)(1). Because you have failed to demonstrate the applicability of section 552.108(a)(1) of the Government Code, the department may not withhold any portion of the remaining submitted information on such basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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.¹ *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 established. *Id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). In this instance, the submitted information contains personal financial information, which we have marked, that is intimate or embarrassing and of no legitimate public concern. Therefore, 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 excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration.² Gov't Code § 552.130(a)(1), (2). Thus, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. Furthermore, the department must withhold this type of information from the related compact discs we have marked. In the event the department does not have the technological capacity to redact the Texas license plate numbers from the compact discs, the department must withhold the compact discs we have marked in their entirety.

In summary, (1) the department must release the accident report, which we have marked, under section 550.065 of the Transportation Code; (2) the department may continue to rely on Open Records Letter No. 2009-14188 as a previous determination and withhold or release the information in accordance with that ruling; (3) the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy; and (4) the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³ If the department does not have the technological capacity to redact the Texas license plate numbers from the

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

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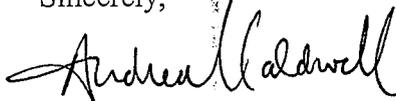
³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

compact discs, the department must withhold the compact discs we have marked in their entirety. The remaining information must be released.⁴

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, 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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/cc

Ref: ID# 373155

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the remaining information 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 the necessity of requesting a decision from this office under the Act.