



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 24, 2010

Mr. Mack Reinwand  
Assistant City Attorney  
Arlington Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2010-12859

Dear Mr. Reinwand:

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# 391445 (Police Dept. Ref. Nos. 1129-060810 and 1494-072010).

The Arlington Police Department (the "department") received two requests from two requestors for information related to a specified incident. 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 must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Furthermore, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A). The department states it received the first request for information on June 7, 2010. Accordingly, the department's ten-business-day deadline for the first request was June 21, 2010, and the department's fifteen-business-day deadline for the first request under section 552.301(e) was June 28, 2010. However, the department's request for a ruling

with respect to this information was sent by facsimile on June 22, 2010. In addition, the department did not submit a portion of the information responsive to the first request until August 3, 2010. Consequently, with respect to the first request, we find the department failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released; the governmental body can overcome this presumption only by demonstrating a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason generally exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you claim an exception to disclosure under section 552.108 of the Government Code, that section is a discretionary exception that protects a governmental body's interests, and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). You also raise section 552.108 of the Government Code with respect to the information submitted in response to the second request. However, the information submitted in response to the second request is also responsive to the first request. In failing to comply with the procedural requirements of section 552.301 of the Government Code and waiving your section 552.108 claim with respect to the first request, we find you also waived your claim under section 552.108 for the submitted information with respect to the second request. *See generally* Gov't Code § 552.007 (prohibiting selective disclosure of information). Therefore, the department may not withhold any of the submitted information under section 552.108 of the Government Code. We note the submitted information may be subject to sections 552.101 and 552.130 of the Government Code.<sup>1</sup> Because sections 552.101 and 552.130 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.

Next, we note the submitted information includes a CR-3 crash report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c) or (e), 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. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release

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

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.* In this instance, both requestors have provided the department with two of the three pieces of information pursuant to section 550.065(c)(4). Therefore, the department must release the crash report form, which we have marked, to both requestors pursuant to section 550.065(c)(4) of the Transportation Code.

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. This section encompasses information protected by other statutes, including section 411.083 of the Government Code, which pertains to criminal history records information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Upon review, we find that a portion of the remaining information consists of confidential CHRI. Accordingly, the department must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). The remaining information contains fingerprints. There is no indication the requestors have a right of access to the fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Therefore, the department must withhold the submitted fingerprints, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code 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 or 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs,

illnesses, operations, and physical handicaps). Upon review, we find that portions of the remaining information are highly intimate or embarrassing and of no legitimate concern to the public. Therefore, the information we have marked, as well as the information we have indicated on the video and audio recordings, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. In the event the department does not have the technological capacity to redact the information we have indicated from the submitted video and audio recordings, the department must withhold the recordings in their entirety.

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(a)(1), (2). We note section 552.130 protects personal privacy. We further note that each requestor is an attorney representing an individual or individuals whose information is at issue. Accordingly, both requestors have a right of access to the Texas motor vehicle record information of their respective clients under section 552.023 of the Government Code.<sup>2</sup> Thus, the department must release the Texas motor vehicle record information belonging to the requestors' respective clients. Otherwise, the department must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code, as well as the Texas license plate number in the submitted video recording we have indicated.<sup>3</sup> In the event the department does not have the technological capacity to redact the license plate number from the submitted video recording we have indicated, the department must withhold the video recording in its entirety.

In summary, the department must release the crash report form, which we have marked, to both requestors pursuant to section 550.065(c)(4) of the Transportation Code. The department must withhold information we have marked pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law, the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, including the information we have indicated on the video and audio recordings we have marked. In the event the department does not have the technological capacity to redact the information we have indicated from the submitted video and audio recordings, the department must withhold the recordings in their entirety. With the exception of the

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<sup>2</sup>Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

<sup>3</sup>We 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 and license plate numbers, and the portion of any video depicting a discernible Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

information belonging to the requestors' respective clients, the department must also withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code, as well as the Texas license plate number in the submitted video recording we have marked. In the event the department does not have the technological capacity to redact the license plate number from the submitted video recording we have marked, the department must withhold the video recording in its entirety. The remaining information must be released.<sup>4</sup>

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), 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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 391445

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

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<sup>4</sup>We note that the information being released contains a social security number. 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. We further note that these requestors have a special right of access to some of the information being released that would otherwise be confidential with regard to the general public. See Gov't Code § 552.023(a). Therefore, if the department receives another request for this information from a person who does not have a special right of access to this information, the department should resubmit this same information and request another decision from this office. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).