



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2010

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2010-18115

Dear Ms. Monteros:

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# 400088 (CA-OP-10-348).

The El Paso County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified accident. You state the sheriff has released some of the requested information, but claim some of the submitted information is excepted from disclosure under sections 552.111, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, you inform us the requested information pertains to a criminal investigation that resulted in a conviction. Under section 552.022(a)(1) of the Government Code, a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Accordingly, the submitted information is

¹The submitted 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. The requestor has a right, however, to his client's social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

subject to section 552.022(a)(1). Although you assert some of this information is excepted from disclosure under section 552.111 of the Government Code, this section is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 663 at 5 (1999) (governmental body may waive section 552.111). Accordingly, the sheriff may not withhold the submitted information under section 552.111 of the Government Code. However, sections 552.101, 552.130, and 552.136 constitute other law for purposes of section 552.022(a)(1).² Therefore, we will address whether these sections are applicable to the submitted information.

We next note the submitted information contains a CR-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064(b) (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See 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 of the items of information specified by the statute. *Id.* The requestor has provided the sheriff with two of the three pieces of information pursuant to section 550.065(c)(4). Thus, the requestor has a right of access to the report pursuant to section 550.065(c)(4) of the Transportation Code. We have marked the information subject to section 550.065(c)(4).

You claim portions of this accident report are excepted from disclosure sections 552.130 and 552.136 of the Government Code. However, a statutory right of access generally prevails over the Act's exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, the sheriff must release the submitted CR-3 accident report in its entirety to the requestor under section 550.065(c) 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." This section encompasses the doctrine of common-law privacy, which protects information that

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

(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). Prior decisions of this office have found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. See Open Records Decision Nos. 545, 523 (1989); see also ORD 600 (personal financial information includes choice of particular insurance carrier). The submitted documents contain personal financial information, and the public does not have a legitimate interest in it. See Open Records Decision Nos. 620 (1993), 600. Thus, the sheriff must withhold this information, which we have marked, under section 552.101 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 issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Some of the submitted information pertains to the requestor's client. The requestor has a right of access to his client's Texas motor vehicle record information pursuant to section 552.023 of the Government Code. See *id.* § 552.023(b); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). However, the Texas motor vehicle record information pertaining to individuals other than the requestor's client in the remaining information, which we have marked, is excepted from release under section 552.130 of the Government Code. The remaining documents do not contain Texas motor vehicle record information; thus, the sheriff may not withhold any of the remaining information under section 552.130.

Finally, you seek to withhold insurance policy numbers in the remaining information under section 552.136 of the Government Code. Section 552.136(b) provides that "[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." Gov't Code § 552.136(b). This information, however, pertains to the requestor's client. See *id.* § 552.023(b); ORD 481 at 4. Thus, the requestor has a right of access to this information under section 552.023, and the sheriff may not withhold it under section 552.136.

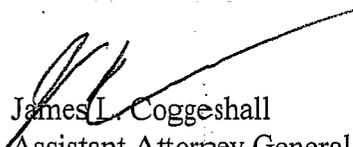
To conclude, the sheriff must release the CR-3 accident report we have marked pursuant to section 550.065(c)(4) of the Transportation Code. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with

common-law privacy and under section 552.130 of the Government Code.³ The sheriff must release the remaining information.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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 400088

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³This office 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 under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

⁴Because the requestor has access to some of the submitted information under section 550.065 and section 552.023, the sheriff must again seek a decision from this office if it receives a request for this information from a different requestor.