



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 12, 2011

Mr. Todd C. Simons
Assistant City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2011-00613

Dear Mr. Simons:

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# 405711.

The San Angelo Police Department (the "department") received a request for information regarding a specified automobile accident. You state you have released some of the responsive information to the requestor. You claim that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a crash report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report 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.* In this instance, the requestor has provided the department with all three specified items of information. Therefore, the department must release the submitted crash report pursuant to section 550.065(c)(4) of the Transportation Code.

Next, you raise section 552.101 of the Government Code in conjunction with common-law privacy for the submitted disk labeled Exhibit L. 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 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree that portions of the submitted information are highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the photographs we have noted on the submitted disk labeled Exhibit L, as well as the portions of the video recordings we have indicated on the submitted disk labeled Exhibit C, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information to be highly intimate or embarrassing and of no legitimate public concern. Thus, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.¹ Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information we have indicated in the submitted disk labeled Exhibit C under section 552.117(a)(2) of the Government Code.

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). We have marked the motor vehicle record information that is subject to

¹The 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).

section 552.130 of the Government Code. We note, however, the requestor in this instance is the insurance provider for one of individuals listed in the submitted information. As such, this requestor, if acting as the individual's authorized representative, has a right of access to her insured's marked Texas motor vehicle record information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear that the requestor is acting as the individual's authorized representative. Therefore, we must rule conditionally. To the extent the requestor has a right of access under section 552.023 to her insured's Texas motor vehicle record information, the department must release this information to the requestor, and withhold the remaining information we have marked and indicated in the submitted information under section 552.130 of the Government Code. To the extent this requestor does not have a right of access under section 552.023, the department must withhold all of the Texas motor vehicle record information we have marked in the submitted reports and noted on the submitted disk labeled Exhibit L, as well as the portions of the video recording files we have indicated on Exhibit C, under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], 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 office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Section 552.136 also protects privacy interests. As previously noted, the requestor may be acting as the authorized representative her insured. Thus, to the extent the requestor is acting as her insured's authorized representative, the department must release her insured's insurance policy numbers. If the requestor is not acting as her insured's authorized representative, the department must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.²

In summary, the department must withhold the photographs we have noted on the submitted disk labeled Exhibit L, as well as the portions of the video recordings we have indicated on the submitted disk labeled Exhibit C, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have indicated on the submitted disk labeled Exhibit C under section 552.117(a)(2) of the Government Code. To the extent the requestor has a right of access to her insured's Texas motor vehicle record information, the department must release this information to the requestor. To the extent this requestor does not have a right of access under section 552.023, the department must withhold the Texas motor vehicle record information we have marked

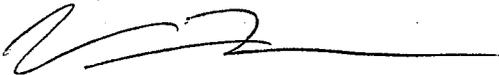
²We note that this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and Texas license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136, without the necessity of requesting an attorney general decision.

in the submitted reports and noted on the submitted disks labeled Exhibit L and Exhibit C under section 552.130 of the Government Code. To the extent the requestor has a right of access to her insured's policy number, the department must release this information to the requestor. To the extent this requestor does not have a right of access under section 552.023, the department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. We note that if the department does not have the technological capability to redact the information we have noted on Exhibit C, the department must withhold Exhibit C in its entirety. 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 405711

Enc. Submitted documents

c: Requestor
(w/o enclosures)