



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2011

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-02057

Dear Ms. Benton:

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# 408794 (LGL-10-1654).

The City of Waco (the "city") received a request for information, including photographs and video recordings, related to case number 10-21220. You indicate some of the responsive information will be made available to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 information protected by other statutes, such as section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or subsection (e), 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). In this instance, the requestor has not provided the city with the requisite pieces of information specified by the statute. Accordingly, the city must

withhold the CR-3 accident report under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Next, you claim the information you have highlighted is excepted under section 552.108 of the Government Code. Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You inform this office that the submitted information pertains to a closed case that did not result in conviction or deferred adjudication. Thus, based on your representation, we conclude that the city may withhold the marked information under section 552.108(a)(2) of the Government Code.¹

Section 552.101 of the Government Code also incorporates 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 satisfied. *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 medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under 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 find that some of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city must withhold the information you have marked in the remaining records under section 552.101 of the Government Code in conjunction with common-law privacy.

You have marked information in the remaining records that you claim is subject to section 552.130 of the Government Code. Section 552.130 provides that 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). Accordingly, we agree that the city may withhold most of the

¹As section 552.108 is dispositive, we do not address your remaining claims for this information.

information you have marked pursuant to section 552.130. However, we note that the vehicle style you have marked does not constitute motor vehicle record information for purposes of section 552.130, and may not be withheld on this basis. Therefore, except for the information we have marked for release, the city must withhold the information you have marked in the remaining records under section 552.130 of the Government Code.

In summary, the department must withhold the CR-3 accident report under section 552.101 in conjunction with section 550.065(b) of the Transportation Code. The city may withhold the information you have marked under section 552.108 of the Government Code. The city must withhold the information you have marked in the remaining records under section 552.101 of the Government Code in conjunction with common-law privacy. Except where we have marked for release, the city must withhold the information you have marked in the remaining records under section 552.130 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 408794

Enc. Submitted documents

c: Requestor
(w/o enclosures)