



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2011

Ms. Tiffany Bull  
Assistant City Attorney  
Arlington Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2011-06053

Dear Ms. Bull:

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# 416519 (Police Dept. Reference Nos. 3197-021511 and 3328-030211).

The Arlington Police Department (the "department") received two requests for information related to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the department did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business-day after the date of receiving the written request." Gov't Code § 552.301(b). While you raised section 552.108 within the ten-business-day time period required by subsection 552.301(b) for Exhibit B of the information you submitted as responsive to the first request, you did not raise section 552.108 until after the ten-business-day deadline had passed for Exhibit C of the information you submitted as responsive to the first request.<sup>1</sup> Generally, if a governmental body fails to timely raise an exception, that exception is waived.

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<sup>1</sup>We note the information in Exhibit C of the first request is also submitted as part of Exhibit B for the second request.

*See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Section 552.108 is a discretionary exception to disclosure which protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, by failing to comply with section 552.301(b) with respect to its claim under section 552.108 for Exhibit C in the information you submitted as responsive to the first request, the department has waived its claim under this section for this information. In waving section 552.108 for the first request, you have waived this section for the same information in the second request. Accordingly, the department may not withhold the information at issue in Exhibit C under section 552.108 of the Government Code for either request. However, we will address your timely raised exception for the information contained within Exhibit C of the first request, as well as your claim under section 552.108 for Exhibit B and the autopsy report which you only submitted as responsive to the second request.

Next, we note a portion of the documents for which you timely claim section 552.108 include a CR-3 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. This section encompasses information protected by other statutes, including section 550.065 of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of the accident report to a person who provides two or more of the following three pieces of information: (1) date of the accident; (2) specific location of the accident; and (3) name of any person involved in the accident. *Id.* § 550.065(c)(4). In this instance, both requestors have provided the department with all three of the items listed in section 550.065(c)(4). Accordingly, the requestors in this instance have a statutory right of access to the submitted accident report pursuant to section 550.065(c)(4). You claim this accident report is excepted from disclosure pursuant to section 552.108 of the Government Code. However, a statutory right of access generally prevails over the Act's exceptions to disclosure. *See* Open Records Decision Nos. 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 department must release the submitted CR-3 accident report in its entirety to the requestors under section 550.065(c) of the Transportation Code.

Section 552.108(a)(1) of the Government Code 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 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 state the incident reports in Exhibit B of the information you submitted as responsive to the first request and the autopsy report, submitted only as responsive to the second request, pertain to a pending criminal investigation. Based on your representations, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, you may withhold the remaining information submitted as Exhibit B of the information you submitted as responsive to the first request and the autopsy report pursuant to section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, 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 at 7 (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 the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with Government Code chapter 411, subchapter F. However, section 411.083 does not apply to active warrant information or other information relating to a person's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). In addition, CHRI does not

include driving record information. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find portions of the remaining information in at issue, which we have marked, consist of CHRI that is confidential under chapter 411. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with chapter 411 and federal law.

Next, you claim the information for which you did not timely raise section 552.108 is excepted under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code also encompasses the common-law right of 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. *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 type 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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* ORD 373. Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we determine you have failed to demonstrate how any of the remaining information at issue highly intimate or embarrassing and not of legitimate public concern. As such, the department may not withhold any of the remaining information on the basis of common-law privacy.

Section 552.130 of the Government Code 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). We note, section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Accordingly, to the extent the Texas motor vehicle record information we have marked pertains to a vehicle owned by a living person, it must

be withheld under section 552.130 of the Government Code. However, if this information pertains solely to a deceased individual, it may not be withheld under section 552.130.

Lastly, we note the submitted records contain an insurance policy number. Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. We conclude the insurance policy number we have marked constitute access device numbers for purposes of section 552.136. Thus, the department must withhold the marked insurance policy number under section 552.136 of the Government Code.

In summary, the department must release the submitted CR-3 accident report in its entirety to the requestors under section 550.065(c) of the Transportation Code. With the exception of basic information, the department may withhold the remaining information submitted as Exhibit B of the information you submitted as responsive to the first request and the autopsy report pursuant to section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 in conjunction with chapter 411 and federal law. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. To the extent the Texas motor vehicle record information we have marked pertains to a vehicle owned by a living person or a living person, it must be withheld under section 552.130 of the Government Code. The department must withhold the marked insurance policy numbers under section 552.136 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](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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/tf

Ref: ID# 416519

Enc. Submitted documents

c: Requestor  
(w/o enclosures)