



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 10, 2011

Mr. Robert Almonte
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2011-08278

Dear Mr. Almonte:

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# 425055.

The El Paso Police Department (the "department") received a request for information pertaining to a specified accident. You state you have released some of the requested information. You claim the submitted information is 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.

Initially, we note the submitted information contains a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) provides, 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) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has provided the department with the three requisite pieces of information specified by the statute. Accordingly, the department must release the submitted CR-3 accident report in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

You claim the remaining information is excepted under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the remaining information pertains to a closed criminal investigation that did not result in conviction or deferred adjudication. Accordingly, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, except for basic information, the department may withhold the remaining information under section 552.108(a)(2).¹

You seek to withhold the basic information under section 552.101 in conjunction with the doctrines of common-law and constitutional privacy.² Common-law privacy 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. Upon review, we find that none of the basic information is highly intimate or embarrassing or of no legitimate public concern. Therefore, no portion of the basic information is confidential under common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

²Section 552.101 encompasses the doctrines of common-law and constitutional privacy.

common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the department has failed to demonstrate how any of the basic information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Thus, no portion of the basic information may be withheld under section 552.101 in conjunction with constitutional privacy.

In summary, the department must release the CR-3 crash report in its entirety pursuant to section 550.065 of the Transportation Code. Except for basic information, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eb

Ref: ID#425055

Enc. Submitted documents

cc: Requestor
(w/o enclosures)