



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2011

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-14839

Dear Ms. Villarreal:

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# 434620 (LGL-11-1141; LGL-11-1251).

The City of Waco and Waco Police Department (collectively, the "city") received two requests for information pertaining to a specified accident: the first on August 10, 2011 (the "first requestor") and the second on August 26, 2011 (the "second requestor"). You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information contains a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c) or (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 pieces of information: (1) date of the accident; (2) name of any

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

person involved in the accident; and (3) specific location of the accident. *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 pieces of information specified by the statute.² *Id.* The first requestor has not provided the city with two of the three pieces of information pursuant to section 550.065(c)(4). Thus, the city must withhold the accident report, which we have marked, from the first requestor pursuant to section 550.065(b). The second requestor, however, has provided the city with two of the three pieces of information pursuant to section 550.065(c)(4). Although you contend some information in the accident report is excepted from disclosure under section 552.130 of the Government Code, a statute governing the release of specific information prevails over the exceptions to disclosure found in the Act. Attorney General Opinion DM-146 at 3 (1992); *see also* 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 exceptions to disclosure under the Act). Thus, the city must release the marked accident report in its entirety to the second requestor.

You assert some of the remaining information is excepted from disclosure under section 552.101 of Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information made confidential by statute. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand the city is part of an emergency communication district established under section 772.318. You have highlighted the telephone numbers and an address of a 9-1-1 caller. Thus, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if a 9-1-1 service provider furnished this information to the city. However, if a 9-1-1 service provider did not furnish this information to the city, then the city may not withhold this information on that ground, but instead must release it to the requestors.

Section 552.101 also 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).

²Transp. Code § 550.0601 (“department” means Texas Department of Transportation).

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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *E.g., see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the city must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The city must withhold the motor vehicle record information pertaining to living individuals that we have marked under section 552.130. We note, however, section 552.130 protects privacy, which is a personal right that lapses at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Therefore, the city may not withhold the driver's license information of the deceased accident victim under section 552.130, but instead must release it to the requestors. In addition, we have marked information pertaining to the deceased individual's vehicle. The city must withhold this information under section 552.130 if a living individual owns an interest in the vehicle. However, if a living individual does not own an interest in the deceased victim's vehicle, then the city may not withhold this information under section 552.130, but instead must release it to the requestors. The remaining information, including the social security number you have marked, does not

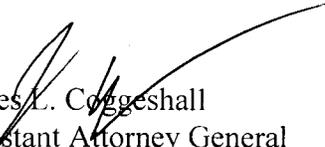
contain motor vehicle record information and, thus, the city may not withhold the remaining information under section 552.130.³

We conclude the following: (1) pursuant to section 550.065 of the Transportation Code, the city must withhold the marked CR-3 accident report from the first requestor, but must release the report to the second requestor; (2) the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if a 9-1-1 service provider furnished this information to the city; however, if a 9-1-1 service provider did not furnish this information to the city, then the city may not withhold this information on that ground; (3) the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) the city must withhold the motor vehicle record information of living individuals we have marked under section 552.130 of the Government Code; (4) the city must withhold the information relating to the deceased victim's vehicle that we have marked under section 552.130 if a living individual owns an interest in the vehicle; however, if a living individual does not own an interest in the deceased victim's vehicle, then the city may not withhold this information on that ground; and (5) the city must release the remaining information to the requestors.

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/ag

³We note a governmental body may redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. See Gov't Code § 552.147(b).

Ref: ID# 434620

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)