



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 9, 2011

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2011-16532

Dear Mr. Weir:

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# 436317 (COSA File No. W002994).

The San Antonio Police Department (the "department") received a request for twenty-one categories of information regarding a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. This section encompasses information made confidential by other statutes. We note the submitted information contains CR-3 accident forms completed pursuant to chapter 550 of the Transportation Code. Section 550.065 provides that, except as provided by subsection (c), accident reports are privileged and confidential. Transp. Code § 550.065. Section 550.065(c)(4) of the Transportation Code, however, requires 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. Transp. Code § 550.065(c)(4). In this instance, the requestor has provided the department with the information required. We note you seek to withhold the CR-3 form under section 552.101 of the Government Code in conjunction with common-law privacy. However, because the requestor in this instance has a statutory right of access to the CR-3

form, the department may not withhold it from the requestor on the basis of common-law privacy. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *see* Open Records Decision Nos. 525 (1989) (statutory predecessor), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Accordingly, the submitted CR-3 report, which we have marked, must be released in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

You assert portions of the remaining information are protected by common-law privacy, which is also encompassed by section 552.101 of the Government Code.<sup>1</sup> 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. *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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Upon review, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

We note portions of the remaining information are protected by section 552.130 of the Government Code.<sup>2</sup> Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration, issued by an agency of this state or another state or country. 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). We note that because section 552.130 protects personal privacy, a right which lapses at death, it does not protect information pertaining to deceased individuals. *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

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<sup>1</sup>Although you state you included a more detailed argument concerning section 552.101 as Attachment I, we note no such attachment was included in the information submitted to our office.

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1981). The department must withhold the information we have marked under section 552.130.

We also note a portion of the remaining information is protected by section 552.136 of the Government Code. Section 552.136 provides that “[n]otwithstanding 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(b); *see also* § 552.136(a) (defining “access device number”). This office has determined an insurance policy number is an access device for purposes of section 552.136. Thus, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The remaining information must be released to the requestor.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/agn

Ref: ID # 436317

Enc. Submitted documents

c: Requestor  
(w/o enclosures)