



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2012

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

OR2012-00275

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# 441530.

The El Paso Police Department (the “department”) received a request for seven categories of information regarding an accident involving the requestor’s client, including the criminal background and driving record information of a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to categories one through four of the request for our review. Therefore, we assume you have released that information to the extent it existed on the date the department received the request. *See* Gov’t Code §§ 552.301-.302. If you have not released this information, you must do so at this time. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

We next note that some of the submitted documents are not responsive to the instant request for information, as they do not pertain to the specified accident nor to the named individual’s criminal history or driving record information. We have marked these documents, which the department need not release in response to this request and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

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 the common-law right to 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 met. *Id.* at 681-82.

A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis. We note that records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code § 411.082(2)(B)* (criminal history record information does not include driving record information).

Upon review, we find the present request, in part, requires the department to compile unspecified law enforcement records concerning the individual named in the request and implicates that individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. You have submitted information pertaining to the named individual's driving record and the specified accident. This information does not implicate the privacy interests of the named individual and may not be withheld under section 552.101 on that basis. Thus, we will determine whether this information must be withheld under an exception in the Act.

The submitted information includes a CR-3 peace officer's crash report that was completed pursuant to chapter 550 of the Transportation Code and a CR-2 driver's crash report that was completed pursuant to section 601.004 of the Transportation Code. *See* Transp. Code §§ 550.064 (officer's accident report), 601.004 (driver's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or (e), accident reports are privileged and confidential.<sup>1</sup> *See id.* § 550.065(b). Section 550.065(c)(4) provides for release of an accident report to a person who provides two of the following three items 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. *See 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

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<sup>1</sup>Section 552.101 also encompasses information other statutes make confidential.

of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the department with the specified items of information related to the accident reported in the CR-2 driver's crash report, but has not provided two of the required three items of information pertaining to the accident that is the subject of the CR-3 peace officer's crash report. Therefore, the department must release the submitted CR-2 driver's crash report pursuant to section 550.065(c)(4) of the Transportation Code, but must withhold the submitted CR-3 peace officer's crash report under section 552.101 of the Government Code pursuant to section 550.065(b) of the Transportation Code.

We note common-law privacy also protects other types of information. The type of information considered intimate and 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. 540 S.W.2d at 683. This office has also found that personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992) (finding personal financial information to include choice of particular insurance carrier). Upon review, we find 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.

Section 552.130 of the Government Code exempts 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.<sup>2</sup> Gov't Code § 552.130(a)(1)-(2). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

We note some of the remaining information is subject to 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." *Id.* § 552.136(b). An access device number is one that 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[.]" *Id.* § 552.136(a). This office has concluded that an insurance policy number is an access device number for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Therefore, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the submitted CR-2 driver's crash report pursuant to section 550.065(c)(4) of the Transportation Code, but must withhold the submitted CR-3 peace officer's crash report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We have marked the information the department must withhold under sections 552.130 and 552.136 of the Government Code. The remaining responsive information must be released to the requestor.<sup>3</sup>

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 441530

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b).