



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2012

Mr. Richard L. Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, TX 78551

OR2012-07737

Dear Mr. Bilbie:

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# 454775.

The Harlingen Police Department (the "department") received a request for (1) information pertaining to the investigation of a specified accident involving two named individuals and (2) the opportunity to inspect the wheelchair involved in the specified accident that is in the department's possession. You claim that the submitted 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 requestor asks to inspect the wheelchair in the department's possession. The Act is applicable to "public information," which is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body, and the governmental body owns the information or has a right of access to it. *See Gov't Code* § 552.002. This office has ruled, however, that tangible physical items are not "information," as that term is contemplated under the Act. *See Open Records Decision* No. 581 (1990). Therefore, the wheelchair is not public information for purposes of section 552.002 of the Government Code, and the Act does not require the department to make the wheelchair available to the requestor. *See Gov't Code* §§ 552.002, .021.

Next, we note the submitted information contains CR-3 accident report forms. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or (e), accident reports are privileged and for the confidential use of certain specified entities. Transp. Code § 550.065(b). The submitted CR-3 accident reports were completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). 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). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the department with the requisite information for the CR-3 accident reports. Although you seek to withhold this information under section 552.108 of the Government Code, we note information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under the Act. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the department must release these reports in their entirety to the requestor.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information pertains to a case that concluded in a final result other than a conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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 also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Basic information must be released, even if it does not literally appear on the front page of the report. *See* ORD 127 (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, which you state has been released, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining argument under section 552.108(b)(2) of the Government Code against disclosure of this information.

You claim the basic information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. 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. *Id.* at 683. Upon review, we find you have failed to demonstrate how any portion of the basic information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must release the CR-3 accident reports pursuant to section 550.065 of the Transportation Code. Except for basic information, which you state has been released, the department may withhold the remaining submitted 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 454775

Enc. Submitted documents

c: Requestor
(w/o enclosures)