



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2016

Ms. Ileana Fernandez
Assistant City Attorney
Office of the City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2016-22495

Dear Ms. Fernandez:

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# 629519.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor's client. The department states it will release some of the information to the requestor, including a copy of the CR-3 accident report form pursuant to section 550.065 of the Government Code. *See* Transp. Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). The department states it will redact motor vehicle record information under section 552.130(c) of the Government Code.¹ The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. The department also informs us it has notified an interested third party of the request for information and of the right to submit comments to this office explaining why the submitted information should not be released. *See* Gov't Code § 552.304. As of the date of this letter,

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

we have not received any correspondence from this third party. We have considered the exception the department claims and reviewed the submitted information.

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 of the Government Code encompasses section 143.090 of the Local Government Code. The department states the City of Mesquite is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides as follows:

A department, [the Fire Fighters’ and Police Officers’ Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov’t Code § 143.090. The department informs us the police officers depicted in the photographs in the submitted information have not provided the department with written consent regarding the release of the photographs. The department further informs us none of the remaining exceptions under section 143.090 are applicable. Therefore, the department must withhold the photographs it has indicated, and the additional photographs we have indicated, under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note, however, common-law privacy is a personal right that lapses at an individual's death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ.

App.-Texarkana 1979, writ ref'd n.r.e.); *see also* Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). We note the information the department seeks to withhold pertains to a deceased individual. Therefore, none of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the photographs it has indicated, and the additional photographs we have indicated, under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 629519

Enc. Submitted documents

c: Requestor
(w/o enclosures)