



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 16, 2016

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

OR2016-25531

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# 634596.

The Mesquite Police Department (the "department") received two requests for information regarding a specified accident. You state the department will release some information to the requestors, including 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). You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Next, we note the department has redacted portions of the submitted information. We understand some of the redactions were made pursuant to the previous determination issued to the department in Open Records Letter No. 2015-24970 (2015).<sup>1</sup> The department

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<sup>1</sup>Open Records Letter No. 2015-24970 is a previous determination issued to the department authorizing it to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

has further redacted information pursuant to section 552.136(c) of the Government Code.<sup>2</sup> However, we note the department also redacted additional information. A governmental body may not withhold information from the public without asking this office for a decision under section 552.301 of the Government Code unless a provision of the Act or a previous determination specifically authorizes the governmental body to do so. *See Gov't Code § 552.301(a); see also* Open Records Decision No. 673 (2001) (previous determinations). The department does not assert, nor does our review of the records indicate, the department has been authorized to withhold the additional redacted information without seeking a ruling from this office. *See Gov't Code § 552.301(a); ORD 673*. Therefore, this information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the department should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code § 552.302*.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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.

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<sup>2</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See Gov't Code § 552.136(c)*. If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

Local Gov't Code § 143.090. You inform 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. You further inform us none of the remaining exceptions under section 143.090 are applicable. Therefore, the department must withhold the photographs you 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the department must withhold the motor vehicle record information you marked, as well as all discernible license plates in the remaining submitted photographs, under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], 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); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the department must withhold most of the information it redacted under section 552.136 of the Government Code. However, we find the department has not demonstrated the information we marked for release consists of access device numbers for purposes of section 552.136. Accordingly, the department may

not withhold any of the information we marked for release under section 552.136 of the Government Code.

In summary, the department must withhold the photographs you have indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you marked, as well as all discernible license plates in the remaining submitted photographs, under section 552.130 of the Government Code. With the exception of the information we marked for release, the department must withhold the information you redacted under section 552.136 of the Government Code. The department must release the remaining information.

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](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,



Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/akg

Ref: ID# 634596

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)