



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 5, 2017

Mr. Nicholas Toulet  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702

OR2017-07109

Dear Mr. Toulet:

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# 652030.

The Midland Police Department (the "department") received three requests from the same requestor for all information pertaining to a specified case and two named individuals. You state you have released some information to the requestor, including a redacted CR-3 accident report. *See* Transp. Code § 550.065(c-1). You state you will redact information under sections 552.130(c) and 552.147(b) of the Government Code.<sup>1</sup> You also state you will redact the dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2015-26022 (2015).<sup>2</sup> Additionally, you state you are withholding some information pursuant to the previous determinations issued in Open

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<sup>1</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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). 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 a decision from this office. *See id.* § 552.147(b).

<sup>2</sup>Open Records Letter No. 2015-26022 authorizes the department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

Records Letter Nos. 2015-23311 (2015) and 2016-04310 (2016).<sup>3</sup> You claim the submitted 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.

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. Section 552.101 encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c). In this instance, the requestor is not a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b), and the department must withhold it under section 552.101 of the 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. Upon review, we find the department has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>3</sup>Open Records Letter No. 2015-23311 is a previous determination issued to the City of Midland authorizing it to withhold the originating telephone numbers of 9-1-1 callers furnished to it by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, without requesting a decision from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Open Records Letter No. 2016-04310 is a previous determination issued to the City of Midland authorizing it to withhold the originating addresses of 9-1-1 callers furnished to it by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, without requesting a decision from this office.

In summary, the department must withhold the submitted accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation 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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/bw

Ref: ID# 652030

Enc. Submitted documents

c: Requestor  
(w/o enclosures)