



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2019

Ms. Morgan Day Vaughan
Assistant District Attorney
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408

OR2019-10625

Dear Ms. Vaughan:

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# 760675 (Ref. No. ORR.1279).

The Lubbock County District Attorney's Office (the "district attorney's office") received a request for all documents pertaining to claims, settlements, and payments made by or for the County of Lubbock during a stated period of time.¹ You indicate the district attorney's office will withhold social security numbers pursuant to section 552.147(b) of the Government

¹We note the district attorney's office received clarification of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Code.² You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, and 552.130 of the Government Code.³ We have considered the exceptions 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. This section 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. *See* 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). Thus, the submitted accident reports are confidential under section 550.065(b), and the district attorney’s office must withhold them under section 552.101 of the Government Code.⁴

Section 552.101 also encompasses information made confidential by section 261.201 of the Family Code, which provides, in pertinent part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers

²Section 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* Gov’t Code § 552.147(b).

³Although you also raise sections 552.102, 552.104 through 552.107, 552.1081 through 552.116, 552.1175 through 552.129, and 552.131 through 552.158 of the Government Code, the district attorney’s office makes no arguments to support these exceptions. Therefore, we assume the district attorney’s office has withdrawn its claim these sections apply to the submitted information. *See* Gov’t Code §§ 552.301, .302.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find some of the remaining information, which we have marked, was used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). As you do not indicate the district attorney’s office has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude the district attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.⁵ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You state the information you marked pertains to a pending criminal investigation, and release of this information would interfere with the investigation or prosecution of the case. Based on your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. App.–Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the district attorney’s office may withhold the information you marked under section 552.108(a)(1) 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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of a particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, the court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). However, we note an individual's name, address, and telephone number are generally not highly intimate or embarrassing. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office must withhold all public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the district attorney's office has failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Therefore, the district attorney's office may not withhold any portion of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Accordingly, if the information we marked pertains to an employee who timely requested confidentiality under section 552.024 of the Government Code, then the district attorney's office must withhold the information at issue under section 552.117(a)(1) of the Government Code; however, the district attorney's office may only withhold the cellular telephone number at issue if the service is not paid for by a governmental body.⁶ If the information we marked does not pertain to an employee who timely requested confidentiality under section 552.024 of the Government Code, then the

⁶In this instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

district attorney's office may not withhold the information at issue under section 552.117(a)(1) of the Government Code. We note section 552.117 applies only to records that a governmental body is holding in an employment capacity. The remaining information at issue consists of records pertaining to claims, settlements, and payments maintained by the district attorney's office and is not held by the district attorney's office in an employment capacity. Accordingly, the district attorney's office may not withhold any portion of the remaining information under section 552.117 of the Government Code.

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. Accordingly, the district attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Therefore, the district attorney's office may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

Some of the remaining information is subject to section 552.136(b) of the Government Code, which 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."⁷ *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Thus, the district attorney's office must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

We understand you to raise section 552.101 of the Government Code in conjunction with section 521.052 of the Transportation Code for some of the remaining information. Section 521.052 provides, "[e]xcept as provided by Sections 521.045, 521.046, 521.0475, 521.049(c), and 521.050, and by Chapter 730 [of the Transportation Code], [the Department of Public Safety ("DPS")] may not disclose information from [DPS]'s files that relates to personal information, as that term is defined by Section 730.003 [of the Transportation Code]." Transp. Code § 521.052. In general, section 552.101 only excepts information from disclosure where the express language of a statute makes certain information confidential or states that information shall not be released to the public. Open Records Decision No. 478 (1987). The plain language of section 521.052 specifically regulates the disclosure of information by DPS. As the submitted information is maintained by the district attorney's

⁷The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

office and not DPS, section 521.052 is not applicable in this instance, and the district attorney's office may not withhold any portion of the remaining information on that basis.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You generally raise section 552.152 for some of the remaining information at issue. Upon review, we find you have failed to demonstrate the release of any of the remaining information would subject an employee or officer to a substantial threat of physical harm. Therefore, the district attorney's office may not withhold any portion of the remaining information under section 552.152 of the Government Code.


In summary, the district attorney's office must withhold the submitted CR-3 accident reports under section 552.101 of the Government Code in conjunction with 550.065(b) of the Transportation Code. The district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district attorney's office may withhold the information it marked under section 552.108(a)(1) of the Government Code. The district attorney's office must withhold all public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the information we marked pertains to an employee who timely requested confidentiality under section 552.024 of the Government Code, then the district attorney's office must withhold the information at issue under section 552.117(a)(1) of the Government Code; however, the district attorney's office may only withhold the cellular telephone number at issue if the service is not paid for by a governmental body. The district attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The district attorney's office must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. The district attorney's office 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](#), 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,

A handwritten signature in black ink, appearing to read "Blake Brennan", written in a cursive style.

Blake Brennan
Attorney
Open Records Division

BB/eb

Ref: ID# 760675

Enc. Submitted documents

c: Requestor
(w/o enclosures)