



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 22, 2020

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78207

OR2020-11495

Dear Mr. Kopp:

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# 823401 (COSA File No. W0303519).

The City of San Antonio (the "city") received a request for information pertaining to non-fatal traffic accidents during a specified time period. You claim some of the submitted information is not responsive. In addition, you claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you assert the submitted information that consists of "automatic system warnings" is not responsive to the request for information. However, the information is located within

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<sup>1</sup> Although the city does not raise section 552.136 of the Government Code in its brief, we understand the city to raise this exception based on its markings. In addition, although the city failed to timely raise section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See* Gov't Code §§ 552.007, .302, .352.

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the requested information. Thus, we find this information is responsive to the request for information. Accordingly, the city must release this information, unless it is excepted from release under the Act.

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. *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). 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).

We note the submitted information contains CR-3 accident reports completed pursuant to chapter 550. In this instance, the requestor is not a person listed under section 550.065(c). Thus, the submitted CR-3 accident reports are confidential under section 550.065(b), and the city must withhold them under section 552.101 of the Government Code. However, section 550.065(c-1) requires the city to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the requestor has a right of access to the redacted CR-3 accident reports and the city must release them pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.101 of the Government Code also encompasses information protected by section 730.004 of the Transportation Code, which provides “an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” *Id.* § 730.004. “Personal information” means “information that identifies a person,” and includes a person’s photograph, social security number, driver identification number, name, address but not zip code, telephone number, or medical and disability information.” *Id.* § 730.003(6). The Texas Department of Public Safety (“DPS”) is an “agency” for purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). You state some of the remaining information consists of records that were obtained by the city from DPS. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, the city must withhold the names, addresses but not the zip codes, and telephone numbers of the individuals in the information the city received from DPS under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation

Code. However, the remaining information at issue is not confidential under section 730.004 or 730.013 of the Transportation Code and the city may not withhold any portion of it under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. *See* Health and Safety Code § 772.204. We understand the city is located in an emergency communication district subject to section 772.218. Accordingly, to the extent the telephone numbers you marked consist of originating telephone numbers provided by a service supplier, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. However, if the information at issue does not consist of originating telephone numbers supplied by a 9-1-1 service supplier, then the city may not withhold this information under section 552.101 on the basis of section 772.218.

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, both of 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. 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), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The Third 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.).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold all public citizens' dates of birth within the remaining information and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information at

issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure 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 county. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, upon review, we find you have failed to demonstrate the applicability of section 552.130 to any of the remaining information, and no portion of it may be withheld on that basis.

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." *See 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. Accordingly, the city must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the city must withhold the submitted CR-3 accident reports under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, but must release the redacted CR-3 accident reports to the requestor pursuant to section 550.065(c-1) of the Transportation Code. The city must withhold the names, addresses but not the zip codes, and telephone numbers of the individuals in the information the city received from DPS under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. The city must withhold the originating telephone numbers of 9-1-1 callers you marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code if they were furnished by a 9-1-1 service provider. The city must withhold all public citizens' dates of birth within the remaining information and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code. The city 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 <https://www.texasattorneygeneral.gov/open->

government/members-public/what-expect-after-ruling-issued or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/eb

Ref: ID# 823401

Enc. Submitted documents

c: Requestor  
(w/o enclosures)