



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 4, 2020

Mr. Kevin Bailey  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79701

OR2020-22491

Dear Mr. Bailey:

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# 842930 (ID# M030526-061020).

The City of Midland (the "city") received a request for information about a specified vehicle accident. You state the city has released the CR-3 accident report to the requestor pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for the release of accident report to person or entity listed under this subsection). You claim some of the submitted information was not properly requested pursuant to section 1701.661(a) of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536

S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

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 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have failed to demonstrate any portion of the basic information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any portion of the basic information under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of the basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.

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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/gw

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. In addition, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)