



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
315 South Santa Rosa, 6th Floor
San Antonio, Texas 78207

OR2022-19414

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# 958100 (ORR# W442188).

The City of San Antonio (the "city") received a request for information pertaining to two specified incidents. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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).

The submitted information contains a CR-3 accident report that is subject to chapter 550 of the Transportation Code. We are unable to determine whether the requestor is a person listed under section 550.065(c). Thus, we must rule conditionally. If the requestor is a person listed under section 550.065(c) of the Transportation Code, then the city must release the CR-3 accident report pursuant to section 550.065(b) of the Transportation Code. If the requestor is not a person listed under section 550.065(c), then the city must withhold the report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. Nevertheless, 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, if the requestor is not a person listed under section 550.065(c), then the city must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.108(a) 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: (1) 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 the 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). The city states incident report number 21198371 relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information 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. Civ. 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).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in the *Houston Chronicle* decision. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle* decision). Thus, with the exception of basic information, the city may withhold incident report number 21198371 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 the *Industrial Foundation* decision. *Id.* at 683. 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 submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor may be the individual whose information is at issue. Section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a); see Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, if the requestor is this individual, then the requestor has a right of access to her own private information pursuant to section 552.023 of the Government Code, and the city may not withhold information pertaining to her under section 552.101 in conjunction with common-law privacy.

In summary, if the requestor is a person listed under section 550.065(c) of the Transportation Code, then the city must release the CR-3 accident report pursuant to section 550.065(b) of the Transportation Code. If the requestor is not a person listed under section 550.065(c), then the city 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, but release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code. With the exception of basic information, the city may withhold incident report number 21198371 under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor has a right of access to that information pursuant to section 552.023 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)