



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2022

Mr. J. Joel Tovanche
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-27831

Dear Mr. Tovanche:

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# 971335 (Ref. No. E003658-062222).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident involving the requestor's client. You state you have released some information. 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.

Initially, we note the submitted information includes a CR-3 accident report subject to chapter 550 of the Transportation Code. Section 552.101 of the Government Code 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 a person listed under section 550.065(c) with respect to the submitted accident report. Thus, the requestor has a right of access to the entire accident report pursuant to section 550.065(c). Although you also assert section 552.101 in conjunction with common-law privacy to withhold the information at issue, a statutory right of access overcomes the common law. *See Collins v. Tex. Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle). Therefore, the city may not withhold any portion of the information at issue under section 552.101 of the Government Code on the basis of common-law privacy. Accordingly, the city must release the CR-3 accident report pursuant to section 550.065(c) of the Transportation Code.

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 of the Government Code encompasses section 773.091 of the Health and Safety Code, which provides, in part, the following:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). The information at issue contains records of the identity, evaluation, or treatment of a patient made and maintained by emergency medical services personnel. Thus, section 773.091 is applicable to this information, which we have indicated. Therefore, with the exception of the information subject to section 773.091(g) of the Health and Safety Code, which is not confidential under section 773.091, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.¹ However, the remaining information is not confidential under section 773.091, and the city may not withhold it under section 552.101 of the Government Code on that ground.

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

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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 highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). Additionally, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455 (1987)*.

Upon review, we find a portion of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, the requestor represents the individual whose privacy interest is at issue. Thus, the requestor has a right of access to information pertaining to the requestor's client that would otherwise be confidential under common-law privacy. *See Gov't Code § 552.023(a)* ("a person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to a person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning herself). Additionally, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

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.² *See Gov't Code § 552.130*. Because section 552.130 protects personal privacy, the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); *ORD 481 at 4*. Accordingly, the city must withhold all audible and visible license plates, license plate numbers, states of issuance, and registration stickers not belonging to the requestor's client within the body worn camera recordings under section 552.130 of the Government Code.

² The 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)*.

In summary, the city must release the CR-3 accident report pursuant to section 550.065(c) of the Transportation Code. With the exception of the information subject to section 773.091(g) of the Health and Safety Code, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must withhold all audible and visible license plates, license plate numbers, states of issuance, and registration stickers not belonging to the requestor's client within the body worn camera recordings under section 552.130 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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/jm

Ref: ID# 971335

Enc. Submitted documents

c: Requestor
(w/o enclosures)