



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 30, 1994

Mr. Donald G. Vandiver  
First Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR94-618

Dear Mr. Vandiver:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27169.

The City of Lubbock (the "city") has received a request for copies of several categories of documents relating to the authority of taxi cabs and limousines to operate within the city limits. The city has released several of the documents, but on behalf of the city, you object to releasing information in the following categories:

A. the original application(s) for permits(s) [sic] from the City Council for limousine and/or taxi permits to operate within the confines of the City of Lubbock submitted by:

[list of several taxi and limousine service providers];

B. copies of the renewal application(s) for limousine and/or taxi permits submitted by any of the above . . . (including the description variations in the accompanying note)];

....

D. copies of all notices of non-compliance with any City of Lubbock ordinance or other law of the State of Texas to any person or entity described in A . . . ;

....  
G. copy of any proposed amendment to the current City of Lubbock limousine ordinance;

H. copy of any proposed amendment to the current City of Lubbock taxi ordinance . . . .

Since we received your initial request for a decision, we have received a statement from the requestor that he does not seek "financial statements of the individual and corporate applicants for taxi and limousine permits to the City of Lubbock." We have marked as nonresponsive the information that we believe constitutes such financial statements; the city need not release this information to the requestor.

We understand that the city has notified all of the entities listed in item A of this request and has invited them to submit to this office written comments discussing why the city should withhold any or all of the requested information. See Gov't Code § 552.305 (providing that third party whose privacy or property interests may be implicated by release of requested information may submit written comments to attorney general stating why governmental body should withhold or release requested information). We have not received written comments from any of the entities.

Regardless of the lack of response, the city may not release to the public confidential information.<sup>1</sup> See *id.* § 552.352. We therefore will proceed to consider the exceptions to public disclosure that you have raised in relation to the five categories of information listed above.

You state that the information described in item A, the original applications of various taxicab and limousine companies for permits to operate within the city limits, includes "such items as social security numbers, debts, resumes, assets, and proposed rates." You believe that the release of this information implicates third party privacy and property interests.<sup>2</sup> We therefore understand you to claim that section 552.101 of the Government Code excepts the requested information from required public disclosure.

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<sup>1</sup>Section 552.023(a) of the Government Code provides a person or the person's authorized representative with a special right of access to information "relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests." You have not identified the requestor as a person or an authorized representative of a person whose privacy interests you believe are implicated by the release of this information.

<sup>2</sup>You state that the information described in item A implicates third party privacy and property interests "because the request[or] represents a business competitor." Unless the requestor has a special right of access to the requested information, the identity of the requestor and the purpose for which he or she desires the requested information is irrelevant to the determination of whether the governmental body

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 thus incorporates other statutory provisions that make specified documents confidential. You have cited no statutory provisions that make any of the requested information confidential. *But see infra* at 5 (discussing statute that may render social security numbers confidential). Additionally, you do not claim that release of the requested information raises constitutional privacy concerns.<sup>3</sup> We will consider whether the common-law privacy doctrine precludes the release of the information described in item A.

The Texas Supreme Court, in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), articulated a two-pronged test that we use to determine whether information is confidential under the doctrine of common-law privacy and therefore exempt from required public disclosure under section 552.101. Under the test, information is confidential if (1) it contains highly intimate or embarrassing facts about an individual's private affairs such that the release of the information would be highly offensive to a reasonable person and (2) the public has no legitimate interest in it. *Industrial Found.*, 540 S.W.2d at 685.

Much of the information you have marked as private consists of financial information other than the financial statements of applicants for taxi and limousine permits from the city. This office long has held that background financial information that an individual submits to a governmental body as part of an application for a benefit is confidential under section 552.101 unless the requestor demonstrates special circumstances indicating a legitimate public interest in the information.<sup>4</sup> *See, e.g.,*

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(Footnote continued)

may withhold the information. *See* Gov't Code §§ 552.222, .223 (defining permissible inquiry of person requesting information and requiring governmental body uniformly to treat all requests for information).

<sup>3</sup>The constitutional right of privacy protects information that falls within one of the "zones of privacy" the United States Supreme Court has articulated, *see Paul v. Davis*, 424 U.S. 693 (1976); *Roe v. Wade*, 410 U.S. 113 (1973), as well as an individual's interest in avoiding the disclosure of personal matters to the public or to the government. Matters falling within one of the constitutional "zones of privacy" include matters pertaining to marital activities, procreation, contraception, family relationships, and child rearing and education. *See Paul v. Davis*, 424 U.S. 693; *Roe v. Wade*, 410 U.S. 113. Generally, the constitutional right of privacy protects information that is not within one of the zones of privacy only if it relates to the most intimate aspects of human affairs. *See Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986).

<sup>4</sup>In Open Records Decision No. 373 (1983) this office considered whether the statutory predecessor to section 552.101 of the Government Code required the City of Austin to withhold from public disclosure applications to a city-administered program to receive a federally funded loan or grant to rehabilitate applicants' homes. According to the decision, the application files contained information about an applicant's sources of income, employment, salary, mortgage payments, assets, medical and utility bills, social security and veterans' administration benefits, verification of employment and mortgage payments,

Open Records Decision Nos. 590 (1991) at 3; 545 (1990) at 2-4; 523 (1989) at 3 (and sources cited therein). *See generally* Open Records Decision No. 373 (1983). No special circumstances have been demonstrated here. Thus, the responsive financial information included in the records you have submitted to this office relating to an individual's finances is confidential, and the city may withhold it.

The vast majority of the financial information, however, relates to the finances of a business entity, not an individual. Corporations do not have a right to privacy. *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *Rosen v. Matthews Const. Co.*, 777 S.W.2d 434, 436 (Tex. App.—Houston [14th Dist.] 1989) (citing *United States v. Morton Salt Co.*), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990); Open Records Decision No. 620 (1993) at 4 (citing *United States v. Morton Salt Co.*); *see also* Open Records Decision No. 192 (1978) (stating that right of privacy protects feelings and sensibilities of human beings and does not protect evaluation report on private college). Accordingly, the city may not withhold from the requestor any of the responsive financial information relating to corporations. This includes fare schedules and tax statements.

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(Footnote continued)

credit history, age, ethnic origin, and family composition. Open Records Decision No. 373 at 1. In the course of considering whether the doctrine of common-law privacy applied to financial information in the files, the decision concluded that

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common[-]law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

*Id.* at 3; *see Industrial Found.*, 540 S.W.2d at 685. The decision next considered the second prong of the common-law privacy test, concluding that

the second requirement of the common[-]law privacy test . . . ordinarily [cannot] be satisfied where the only relation of the individual to government is as an applicant for a housing rehabilitation grant. While it is true that the public has some interest in knowing whether public funds expended in such grants are being given to qualified applicants, we believe that in the ordinary situation this interest will not be sufficient to justify the invasion of the applicant's privacy that would result from disclosure of information concerning his financial status. Because, however, a requestor may, by showing "special circumstances," overcome the presumption that there is no sufficient legitimate public interest in private information of an intimate nature, we conclude that the determination of whether the public's interest in obtaining this information is sufficient to justify its disclosure must be made on a case-by-case basis.

*Id.* at 3-4.

We note that a few of the documents provide criminal history record information about certain of the individual applicants. The applicants have provided some of the criminal history record information themselves in response to a question on the application form. The Lubbock Police Department has provided other criminal history record information. In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the Texas Court of Civil Appeals held that an individual's right of privacy precludes a police department from releasing to the public the individual's arrest record.<sup>5</sup> We therefore conclude that the city must withhold from the requestor the criminal history record information it received from the Lubbock Police Department. On the other hand, the city may not withhold criminal history record information that the applicants themselves provided.

We find no other information pertaining to either the individual applicants or the corporations that satisfies both prongs of the two-pronged *Industrial Foundation* test. For your convenience, we have marked the information the city may withhold pursuant to the common-law right of privacy.<sup>6</sup> Please note that we have not marked as confidential social security numbers. In *Open Records Decision No. 622 (1994)* this office concluded that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), only if a governmental body obtained or maintains the social security number in accordance with a provision of law enacted on or after October 1, 1990. You have not indicated whether the city obtained or maintains these applicants' social security numbers pursuant to a statute enacted on or after October 1, 1990. We thus cannot determine whether the city may withhold the social security numbers from the requestor.

The information described in item B is largely similar to the information described in item A. For the same reasons we stated in relation to the information described in item A, we conclude that the city may withhold responsive background financial information about individuals, but the city may not withhold responsive financial information about corporations. For your convenience, we have marked the information the city may withhold. Once again, we have not marked social security numbers.

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<sup>5</sup>We do not understand that sections 411.083 and 411.084 of the Government Code, which, with certain exceptions, restrict the recipient of criminal history record information obtained through the Texas Crime Information Center from further disclosing the information, apply to the criminal history information the city has received from the Lubbock Police Department.

<sup>6</sup>We have marked some information, in addition to the financial statements of the individual and corporate applicants for taxi and limousine permits that the requestor has informed us he does not want, that is not responsive to the request. The city need not release nonresponsive information to the requestor.

We understand you to contend that the city may withhold the information described in item D, "copies of all notices of non-compliance with any City of Lubbock ordinance or other law of the State of Texas" to a taxicab or limousine corporation authorized to operate within the city limits, pursuant to the informer's privilege, which is incorporated into section 552.101 of the Government Code. In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials, and, by preserving their anonymity, encourages them to perform that obligation. [Citations omitted.]

Although the privilege ordinarily applies to the efforts of law-enforcement agencies, it may apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 at 1, 279 at 1-2 (1981); *see also* Open Records Decision No. 208 (1978) at 1-2. This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988) at 3; 391 (1983) at 3. Significantly, however, the privilege protects the content of communications only to the extent that it identifies the informant. *Roviaro*, 353 U.S. at 60.

Furthermore, the informer's privilege authorizes a governmental body to withhold information only if the complainant has reported a possible violation of law to officials charged with enforcement of that law. Open Records Decision No. 434 (1986) at 1; *see also* Open Records Decision No. 515 (1988) at 5 (concluding that informer's privilege is inapplicable to information not describing clearly criminal conduct). You have stated that the incident reports allege violations of city ordinances. We note that one incident report documents a situation in which a limousine driver had locked his or her keys in the car. We find it difficult to believe that this is a violation of law with criminal penalties. Additionally, we note that one incident report documents a "bumping" incident. We understand from perusing other documents you have submitted that bumping is not a violation of the law. Accordingly, the city must release these two incident reports in their entirety.

The remaining incident reports appear to document violations of law. The city may redact from these incident reports information identifying the complainant. You have submitted copies of the requested incident reports (labeled as "Exhibit C"),

indicating identifying information you have thus far withheld from the requestor. With the exception of the two incident reports that we have determined the city must release in their entirety, we agree with your markings.<sup>7</sup> We caution, however, that the city may not withhold a complainant's identity if the individual who would have cause to resent the communication knows the complainant's identity. See Open Records Decision No. 202 (1978) at 2 (quoting *Roviaro v. United States*, 353 U.S. 53, 60 (1957)).

Finally, in response to items G and H, relating to proposed amendments to the city's limousine and taxicab ordinances, you contend that section 552.106 of the Government Code authorizes the city to withhold the requested information. Section 552.106 authorizes a governmental body to withhold from required public disclosure "[a] draft or working paper involved in the preparation of proposed legislation . . . ." In Open Records Decision No. 248 (1980) this office considered whether the statutory predecessor to section 552.106, V.T.C.S. art. 6252-17a, § 3(a)(6), *repealed by* Acts 1993, 73d Leg., ch. 268, § 46(1) at 587, 988, authorized a municipality to withhold drafts of a municipal ordinance and resolution that a city staff group had prepared. The proposed ordinances at issue were drafted for discussion purposes only among a group of city staff members until final drafts were prepared and submitted to the city council. Open Records Decision No. 248 at 1.

Open Records Decision No. 248 noted that section 3(a)(6) excepted only information reflecting "policy judgments, recommendations or proposals"; it did not except basically factual information. *Id.* (quoting Open Records Decision No. 140 (1976)). The decision concluded that, because the drafts at issue reflected policy judgments, recommendations, and proposals, the municipality might withhold the information under section 3(a)(6).

Subsequently, this office concluded that section 3(a)(6) applied only to drafts and working papers prepared by persons officially responsible for preparing them. Open Records Decision No. 429 (1985) at 5. We opined that section 3(a)(6) did not apply to materials prepared by another person or agency with no official responsibility for preparing such materials but who has prepared the materials as an interested person who wishes to influence the legislative process. *Id.*

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<sup>7</sup>You did not raise the informer's privilege with respect to the information described in items A and B. However, we found that you appear to have redacted identifying information from at least one document responsive to items A and B that could be considered a complaint. Unlike other facets of section 552.101 of the Government Code, a governmental body may waive the informer's privilege. See Open Records Decision No. 549 (1990) at 6. Because you did not raise the informer's privilege with respect to documents described in items A and B, the city may not withhold any information that the informer's privilege might have protected.

You state that the city has not passed the requested proposals. You did not inform us who prepared these documents or state that the preparer was a person with official responsibility for preparing such a proposal, but upon reviewing all of the documents you submitted, we believe that city personnel with the official responsibility to do so drafted the proposals. We further believe, after reviewing the submitted documents, that the proposals consist of policy judgments and recommendations and not factual material. Consequently, we conclude that, pursuant to section 552.106 of the Government Code, the city may withhold the information described in items G, H, except those portions of the proposals that have been introduced in a public meeting.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



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Assistant Attorney General  
Open Government Section

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Ref: ID# 27169

Enclosures: Marked documents

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(w/o enclosures)