



November 22, 2002

Ms. Elaine S. Hengen  
Assistant City Attorney  
The City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2002-6722

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172676.

The City of El Paso (the "city") received a written request for all records pertaining to an investigation of a named city police officer in connection with an incident that occurred on March 18, 2002. You note that this office has previously ruled that most of the requested documents were excepted from public disclosure pursuant to section 552.108 of the Government Code. *See* Open Records Letter No. 2002-4310 (2002). You inform us, however, that because the circumstances surrounding the requested documents have changed since the prior ruling was issued, that ruling may not now be deemed a "previous determination" for purposes of section 552.301 of the Government Code. *See generally* Open Records Decision No. 673 (2001). You no longer contend that the requested records are excepted from public disclosure pursuant to section 552.108; rather, you contend that only specific portions of the records at issue are excepted from public disclosure pursuant to sections 552.101 and 552.130 of the Government Code. You additionally note that the city has withheld from the requestor information that reveals peace officers' home telephone, home address, social security number, and family information in accordance with Open Records Decision No. 670 (2001).

You first contend that some of the information at issue should be withheld from disclosure under section 552.101 of the Government Code because it is protected by common-law privacy and by judicial decision. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly

objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. In *Industrial Foundation*, the Texas Supreme Court deemed information to be intimate and embarrassing if the information relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982).

Upon review, we agree that much of the information that you highlighted in the submitted records is both highly intimate or embarrassing and of no legitimate public interest. On the other hand, we do not believe that the fact that a public employee is required to attend a treatment program as a condition of continued employment may be withheld from the public on privacy grounds. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Accordingly, the city must withhold on privacy grounds only the information we have marked in brackets.

Section 552.101 also excepts from public disclosure information made confidential by other law. Section 772.318(c) of Health and Safety Code makes confidential originating telephone numbers and addresses furnished on a call-by-call basis by a service supplier to a 9-1-1 emergency communication district established under subchapter D of chapter 722 of the Health and Safety Code.<sup>1</sup> *See* Open Records Decision No. 649 (1996). Based on your representation that the 9-1-1 communication district that serves the city in fact was established under chapter 722, we agree that the city must withhold the information you highlighted in the CAD report pursuant to section 772.318(c) of the Health and Safety Code.

Finally, we note that section 552.130(a)(1) of the Government Code requires the city to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the city must withhold all Texas driver's license numbers contained in the documents at issue, which you have marked, pursuant to section 552.130(a)(1) of the Government Code. Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the city must withhold the license plate numbers contained in the submitted records, which you have marked,

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<sup>1</sup>Subchapter D applies to 9-1-1 districts for counties with a population over 20,000.

pursuant to section 552.130(a)(2). The remaining submitted information must be released to the requestor, except as discussed above.

In summary, the city must withhold pursuant to common-law privacy only the information we have marked in the submitted records. The city must also withhold pursuant to section 772.318(c) of the Health and Safety Code the information you highlighted in the submitted CAD report. All Texas driver's license numbers and license plate numbers must be withheld pursuant to section 552.130 of the Government Code. The city must release the remaining information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/RWP/lmt

Ref: ID# 172676

Enc: Submitted documents

c: Mr. Louie Gilot, Reporter  
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(w/o enclosures)