



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 30, 2003

Mr. Leonard V. Schneider  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2003-2899

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180709.

The City of League City (the "city"), which you represent, received a request for a copy of the full police report number 02-4967. You have released most of the information and claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You acknowledge that the city failed to comply with section 552.301(b) of the Government Code in asking for this decision. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You state that the city received the present request for information on February 13, 2003. The city did not request a decision from this office until March 6, 2003. Consequently, the city failed to request a decision within the ten-business-day period mandated by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). As sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address your

arguments under those exceptions. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You argue that the birth dates contained within the submitted information, which you have highlighted, should be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Court in *Industrial Foundation* included information relating 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. *Id.* at 683. Generally, we do not consider a date of birth to be intimate or embarrassing. Therefore, we do not believe there is any privacy interest in the birth dates in the submitted information. Such information is not confidential under common-law privacy. You argue that the birth dates should be withheld under section 552.101 in conjunction with Open Records Decision No. 127. That decision, however, dealt with the withholding of a birth date (and other information) from a personal history and arrest record under section 552.108 of the Government Code. As stated above, a date of birth is not protected by common-law privacy. Thus, the city may not withhold the highlighted birth dates under section 552.101 and common-law privacy.

This office has determined that some personal financial information is highly intimate or embarrassing for the purpose of common-law privacy. Open Records Decision Nos. 545 (1990) (common-law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common-law privacy protects assets and income source information). In this instance, we find that the insurance policy number contained in the submitted documents constitutes intimate information for the purpose of common-law privacy, and the public has no legitimate interest in this number. Accordingly, the city must withhold the insurance policy number which we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, you claim that portions of the submitted documents are excepted from disclosure under section 552.130 of the Government Code. That section prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by

an agency of this state, a personal identification document issued by an agency of this state, or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the city must withhold the Texas driver's license, license plate, and vehicle identification information, which you have highlighted, as well the information we have marked, pursuant to section 552.130 of the Government Code. We note, however, that section 552.130 protects the privacy of the individual to whom the information relates. Therefore, the city must release the requestor's Texas license plate and vehicle identification numbers to him (Vehicle #4 and Vehicle #5, which you have highlighted). *See* Gov't Code § 552.023(a) ("[a] person or a 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 the person and that is protected from public disclosure by laws intended to protect that person's privacy interests). However, the license plate and vehicle identification number of the rental car (Vehicle #3) do not "relate" to the requestor as he is not the owner. That information, therefore, must not be released to the requestor as he does not have a special right of access to that information under section 552.023 of the Government Code. The remaining submitted information must be released to the requestor.

You ask this office to issue a previous determination authorizing the city to withhold similar information in similar cases in the future. We decline to issue a previous determination at this time allowing the city to withhold the general category of information at issue in this case in the future. *See* Open Records Decision No. 673 (2001).

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 Dep't of Pub. 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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 180709

Enc. Submitted documents

c: Mr. Michael Clark  
301 Wesley Drive, #528  
League City, Texas 77573  
(w/o enclosures)