



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 11, 2007

Mr. Mario Gutierrez  
Assistant City Attorney  
City of New Braunfels  
P. O. Box 311747  
New Braunfels, Texas 78131-1747

OR2007-00449

Dear Mr. Gutierrez:

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# 268914.

The City of New Braunfels (the "city") received a request for the names, personnel files and reprimand or discipline information for officers assigned to patrol cars #2003 and #2409 at specified times, as well as the names and ranks of these officers' supervisors. You state that you have made available the names and ranks of the supervisors. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have redacted portions of the submitted information that you seek to withhold. Pursuant to section 552.301, a governmental body that seeks to withhold requested information must submit to this office a copy of the information labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code §§ 552.301(a), .301(e)(2). This office has issued a previous determination allowing all governmental bodies to redact certain personal information of peace officers under section 552.117(a)(2) of the Government Code. *See* Open Records Decision No. 670 (2001) (previous determination that governmental body may withhold home address, home telephone number, personal cellular phone number, personal pager number, social security number and information that reveals whether individual has family members, of any individual who meets definition of "peace officer" set forth in article 2.12 of Texas Code of

Criminal Procedure without necessity of requesting attorney general decision as to whether exception under section 552.117(a)(2) applies).<sup>1</sup> Accordingly, the city may withhold the information subject to section 552.117(a)(2) without seeking a decision from this office. However, the city has also redacted other information. This office has not issued the city a previous determination to withhold this type of information. As such, this type of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. As we are able in this instance to ascertain the nature of some of the information that you have redacted, we will determine whether it is excepted from public disclosure. In the future, however, the city should refrain from redacting any information, other than section 552.117(a)(2) information, that it submits to this office in seeking an open records ruling. For the information that the city has redacted and that we are unable to discern, the city failed to comply with section 552.301 and such information is public under section 552.302. *See Gov't Code §§ 552.301(e)(1)(D), .302.*

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. This section encompasses information protected by other statutes. You claim that the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8, may except the submitted information from disclosure. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); see also Attorney General Opinion JC-0508 at 2 (2002).* These standards govern the releasability of protected health information by a covered entity. *See 45 C.F.R. pts. 160, 164.* Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act. *See Open Records Decision No. 681 (2004).* In that decision, we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See 45 C.F.R. § 164.512(a)(1).* We further noted that the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." *See ORD 681 at 8; see also Gov't Code §§ 552.002, .003, .021.* We therefore held that disclosures under the Act come within section 164.512(a) of title 45 of the Code of Federal Regulations. The Third Court of Appeals has also held that disclosures under the Act come within section 164.512(a). *See Abbott v. Tex. Dep't of Mental Health & Mental Retardation,*

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<sup>1</sup>You inform this office that the officers whose information is at issue are "peace officer[s]" as set forth in article 2.12 of the Texas Code of Criminal Procedure.

No. 03-04-00743-CV, 2006 WL 1649003 (Tex. App.—Austin, June 16, 2006, no. pet. h.). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the city may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme 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.

In addition, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy). The submitted records include personal financial information about one of the named employees. We have marked the personal financial information in the submitted records that must be withheld under section 552.101 in conjunction with common law privacy. We note, however, that the city has failed to demonstrate how any portion of the remaining submitted information constitutes highly intimate or embarrassing information for the purposes of common-law privacy. Thus, none of the remaining submitted information may be withheld on this basis.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." *Id.* § 552.130.<sup>2</sup> In accordance with section 552.130 of the Government Code, the city must withhold the Texas driver's license information we have marked.

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions like sections 552.130 and 552.136 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* The city must withhold the bank account numbers we have marked under section 552.136.

In summary, the city must withhold the personal financial information we have marked pursuant to section 552.101 in conjunction with common law privacy. You must withhold the information we marked that is subject to section 552.117(a)(2). You must withhold the Texas driver’s license information we have marked pursuant to section 552.130. You must withhold the bank account numbers we have marked pursuant to section 552.136. The remaining information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

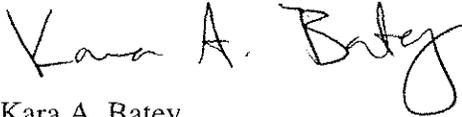
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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 Office of the Attorney General 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. 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,

A handwritten signature in black ink that reads "Kara A. Batey". The signature is written in a cursive style with a large, looped "y" at the end.

Kara A. Batey  
Assistant Attorney General  
Open Records Division

KAB/krl

Ref: ID# 268914

Enc. Submitted documents

c: Mr. Ricardo Reyna  
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(w/o enclosures)