ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2007

Ms. Beverly West Stephens
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2007-16205

Dear Ms. West-Stephens:

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# 296617.

The City of San Antonio (the "city") received a request for information pertaining to the Greater San Antonio Transportation Company ("Yellow Cab") for a specified time period, a specified vehicle permit, examinations taken by a named individual, and a copy of a specified taxi cab driver examination. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.122, 552.130, 552.136, and 552.147 of the Government Code. You also indicate that the submitted information may be subject to third-party proprietary interests, and thus, pursuant to section 552.305 of the Government Code, you have notified Yellow Cab of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Yellow Cab explaining why its information should not be released. We thus have no basis

for concluding that any portion of Yellow Cab's applications or information constitutes proprietary information protected under section 552.110, and none of it may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990).

We now turn the city's arguments against disclosure of the submitted information. 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 encompasses information made confidential by the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The information that we have marked constitutes financial information records. Further, in this instance we find that there is not a legitimate public interest in the release of this information. Accordingly, you must withhold the marked financial information under section 552.101 in conjunction with common-law privacy. However, the remaining information that you have marked under common-law privacy consists of financial information pertaining to a business applying for taxicab permits. There is a legitimate public interest in the release of this information. Thus, common-law privacy is not applicable to any of the remaining information you have marked under common-law privacy and it may not be withheld under section 552.101. Because our determination on this issue is dispositive, we need not address your remaining arguments against disclosure of this information.

Next, you claim the examinations you have marked are excepted from disclosure under section 552.122 of the Government Code. Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. *See* Gov't Code § 552.122. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. ORD 626 at 6. Having reviewed the information at issue, we agree that it constitutes "test items" as

contemplated by section 552.122(b). Therefore, the city may withhold the marked examinations under section 552.122(b).

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." Gov't Code § 552.130(a)(1), (2). Thus, the city must withhold the Texas driver's license and motor vehicle registration information it has marked under section 552.130. We have also marked additional information that must be withheld under section 552.130.

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." *Id.* § 552.136. We note that tax identification numbers and check numbers are not access device numbers for purposes of section 552.136. The city has also failed to explain how the franchise tax file and taxpayer numbers or the property tax account number you have marked under section 552.136 are access device numbers for purposes of this section. Thus, the city must only withhold the bank account, routing numbers, and insurance policy numbers that you have marked under section 552.136. Section 552.136 is not applicable to the remaining numbers, and we have marked these numbers for release.

You claim that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. We agree that the city may withhold the social security numbers you have marked under section 552.147 of the Government Code.[1]

In summary, you must withhold the information we have marked under common-law privacy. You may withhold the examinations you have marked under section 552.122(b). You must withhold the Texas motor vehicle record information marked under section 552.130. You must withhold the bank account, routing numbers, and insurance policy numbers that you have marked under section 552.136. You may withhold the marked social security numbers under section 552.147. 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

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[1]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

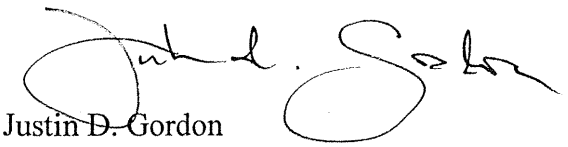
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 296617

Enc. Submitted documents

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