



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 19, 2009

Ms. Eileen McPhee
Carls, McDonald & Dalrymple, LLP
Barton Oaks Plaza 2
901 South MoPac Expressway, Suite 500
Austin, Texas 78746

OR2009-02168

Dear Ms. McPhee:

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# 335314 (CmcD# 1955).

The City of Georgetown (the "city"), which you represent, received a request for information pertaining to a specified incident report. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.130, 552.137 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 exception encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. The common-law right to privacy is a personal right that lapses at death, and therefore it does not encompass information that relates to a deceased individual. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see*

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

also Attorney General Opinions JM-229 (1984); H-917 (1976). In this instance, most of the submitted information is related to a deceased individual. Additionally, we find that you have failed to demonstrate that any of the information at issue is intimate and embarrassing information pertaining to a living individual that is of no legitimate public interest. Therefore, none of the submitted information is protected by common-law privacy, and the city may not withhold it under section 552.101 of the Government Code on that basis.

Next, you assert that some of the submitted information is subject to section 552.130 of the Government Code, which excepts from disclosure information related 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). Section 552.130 protects privacy interests. As discussed above, privacy is a purely personal right that lapses at death. *See Moore*, 589 S.W.2d at 497; Open Records Decision No. 272 at 1 (1981). Thus, motor vehicle record information pertaining to a deceased individual may not be withheld under section 552.130. Accordingly, to the extent the Texas motor vehicle record information we have marked pertains to living individuals, it must be withheld under section 552.130; however, this information may not be withheld under section 552.130 if it pertains to a deceased individual.

Section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code § 552.137(a)-(c)*. Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. Additionally, we note that the purpose of section 552.137 is to protect the privacy interests of individuals, and because the right of privacy lapses at death, the e-mail address of a deceased individual may not be withheld under section 552.137. *See Moore*, 589 S.W.2d at 497. The e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of the marked e-mail addresses. Therefore, unless the city receives consent to release, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

Finally, you have marked a social security number in the remaining information 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. Gov't Code § 552.147. We agree the city may withhold the social security number that you have marked under section 552.147 of the Government Code.²

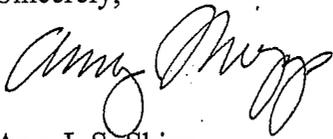
²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, to the extent the Texas motor vehicle record information we have marked pertains to living individuals, the city must withhold the marked information marked under section 552.130 of the Government Code. The city must withhold the e-mail addresses we have marked pursuant to section 552.137 of the Government Code, unless the city received consent for their release. The city may withhold the social security number you have marked under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

Ref: ID# 335314

Enc. Submitted documents

cc: Requestor
(w/o enclosures)