



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2009

Ms. Karen Ellefson
Public Information Officer
The Town of Horizon City
14999 Darrington Road
Horizon City, Texas 79928

OR2009-06891

Dear Ms. Ellefson:

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# 343790.

The Town of Horizon City (the "town") received a request for information related to two specified criminal charges.¹ You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the town's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence showing the date the governmental body received the written request; and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You inform us the town received this request on March 2, 2009. However, you have not submitted to this office a copy of the request for information. Consequently, you did not meet the fifteen-business-day deadline and thus failed to comply with the procedural requirements of section 552.301.

¹Because you have not submitted a copy of the request for information, we take our description from your brief.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of 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 id.* § 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 section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Gov't Code* § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). In failing to comply with section 552.301, the town has waived its claim under section 552.108. You also inform us the El Paso County District Attorney does not object to disclosure of the submitted information. Therefore, none of the submitted information may be withheld under section 552.108. However, we note the submitted documents include information subject to sections 552.101, 552.130, and 552.137 of the Government Code.² Because sections 552.101, 552.130, and 552.137 can provide compelling reasons to overcome the presumption of openness, we will address these exceptions.

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 (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *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 No. 545 (1990). Accordingly, the town must withhold the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130. We note section 552.130 does not apply to out-of-state motor vehicle record information. Therefore, the town must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

Finally, section 552.137 of the Government Code 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 id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The e-mail address we have marked in the remaining information is not of a type specifically excluded by section 552.137(c). Therefore, the town must withhold the marked e-mail address in accordance with section 552.137, unless the town receives consent for its release.

In summary, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code and the marked e-mail address under section 552.137, unless the town receives consent for its release. 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 343790

Enc. Submitted documents

cc: Requestor
(w/o enclosures)