



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2009

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-07434

Dear Ms. Villarreal:

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# 344522 (Waco Request No. LGL-09-252).

The City of Waco (the "city") received a request for information pertaining to a specified police case file.¹ You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.136 of the Government Code. We have considered the exception you claim and reviewed a representative sample of the submitted information.

Section 552.136 provides 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(b); *see also* § 552.136(a) (definition of "access device number" includes account numbers). You state that the submitted CDs contain information subject to section 552.136 of the Government Code. Although the requestor has agreed to the redaction of bank account numbers and credit card numbers, which are subject to section 552.136, you claim the city lacks the technical capability to redact this information from the submitted CDs. Therefore, you argue the submitted CDs must be withheld in their entirety. However, upon review, we

¹You inform us that the requestor has agreed to the redaction of bank account numbers, credit card numbers, and driver's license numbers.

note the files in the submitted CDs can be printed into hard copies and the city possesses this technical capability. Accordingly, the submitted CDs may not be withheld in their entirety. However, we note some of the information in the submitted CDs is subject to section 552.101 of the Government Code, thus, we will address the applicability of this section to the submitted information.²

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 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 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 protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). In this instance, we note the submitted CDs contain personal financial information of an individual and the city must withhold this information under section 552.101 in conjunction with common-law privacy.

We note the submitted CDs contain e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). The city must withhold the personal e-mail addresses in the submitted CDs under section 552.137 of the Government Code, unless their owners affirmatively consent to their disclosure or they are the types specifically excluded in section 552.137(c).

Finally, we note that some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception to

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).

disclosure applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, any bank account numbers, credit card numbers, or driver's license numbers within the submitted CDs are not responsive to the present request and the city need not release them to the requestor. The city must withhold any personal financial information under section 552.101 in conjunction with common-law privacy and any personal e-mail addresses that are not specifically excluded by section 552.137(c), unless the owners of the e-mail addresses at issue have consented to their release under section 552.137. The city must release the remaining information, but any copyrighted information may only be released in accordance with copyright law.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/rl

Ref: ID# 344522

Enc. Submitted documents

c: Requestor
(w/o enclosures)