



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 28, 2009

Mr. Matthew C.G. Boyle  
Boyle & Lowry, L.L.P.  
42201 Wingren, Suite 108  
Irving, Texas 75062-2763

OR2009-10416

Dear Mr. Boyle:

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# 350345.

The City of Hurst (the "city"), which you represent, received a request for information related to alleged criminal ordinance violations.<sup>1</sup> You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city'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). As of the date of this ruling, you have not submitted to this office a copy of the written request for information. Consequently, we find that the city has failed to comply with the procedural requirements of section 552.301.

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<sup>1</sup>As you have not submitted a copy of the request, 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). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

Although you raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, the purpose of the informer's privilege is to protect the flow of information to a governmental body rather than to protect a third person. Thus, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Similarly, section 552.108 is a discretionary exception and may also be waived. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally); 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). Therefore, the city may not withhold any of the requested information under the informer's privilege or section 552.108 of the Government Code. However, because sections 552.101, 552.130, and 552.137 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to 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. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (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 public interest. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. 540 S.W.2d at 683. We find that the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim that portions of Exhibit A are excepted under section 552.130 of the Government Code. Section 552.130 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. We

note that motor vehicle record information issued by another state is not excepted under section 552.130. Upon review, we determine that the city must withhold the Texas motor vehicle information we have marked in Exhibit A under section 552.130 of the Government Code.

We note the remaining information includes an e-mail address subject to 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). *Id.* § 552.137(a)-(c). The e-mail address in the remaining information is not specifically excluded by section 552.137(c). The city must withhold this e-mail address, which we have marked, under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release.

In summary, the city must withhold the information we have marked (1) under section 552.101 of the Government Code in conjunction with common-law privacy; (2) in Exhibit A under section 552.130 of the Government Code; and (3) under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release. The remaining submitted information must be released to the requestor.

You also ask this office to issue a previous determination permitting the city to withhold information subject to section 552.130 of the Government Code without requesting a ruling from this office. We decline to issue such a previous determination at this time. Accordingly, 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/cc

Ref: ID# 350345

Enc. Submitted documents

c: Requestor  
(w/o enclosures)