



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2010

Mr. Whitt L. Wyatt
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2010-13518

Dear Mr. Wyatt:

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# 392867 (ORR No. 10-424).

The Richardson Police Department (the "department") received a request for information related to a specified report number. You state you have released some of the requested information with redactions pursuant to Open Records Decision No. 684 (2009).¹ You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have redacted information from the submitted documents that you seek to withhold. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). As we are able in this instance to ascertain the nature of the information you have redacted, we will determine whether it is excepted from public disclosure. In the future, the department must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301. *See* Gov't

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, credit card numbers and bank account numbers under section 552.136 of the Government Code, and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Code §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *See id.*

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 section 261.201 of the Family Code, which provides in part as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the information we have marked was used or developed in investigations of alleged child abuse under chapter 261. *See id.* § 261.001(1) (defining "abuse" for purposes of Family Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). As there is no indication that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we find the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld pursuant to section 552.101.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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 concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or 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. 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 pretax 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). We note that some of the information we have marked is private financial information. We also note, however, that privacy is a personal right that lapses at death, and thus common-law privacy is not applicable to information that relates only to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Further, we note the beneficiary of an insurance policy has a separate right to privacy and information that would reveal a beneficiary's identity is protected by common-law privacy.

Upon review, we find the information we have marked is highly intimate and embarrassing and of no legitimate public interest. Therefore, the department must generally withhold this marked information under section 552.101 in conjunction with common-law privacy. However, if the marked private financial information relates only to the financial interests of a deceased individual, this information is not protected by common-law privacy and may not be withheld on that basis under section 552.101. Further, none of the remaining information is highly intimate or embarrassing and of no legitimate public interest and may not be withheld under 552.101 on the basis of common-law privacy.

We note that some of the remaining information is subject to sections 552.130 and 552.136 of the Government Code. Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). You have marked Texas license plate numbers under section 552.130 pursuant to ORD 648. However, section 552.130 protects the privacy interest of the individual, and, as noted above, the right of privacy lapses upon death. *See Moore*, 589 S.W.2d at 491. Accordingly, to the extent the Texas license plate numbers you have marked pertain to vehicles in which a living person has an ownership interest, they must be withheld under section 552.130. However, if this information pertains solely to a deceased individual, it may not be withheld under section 552.130.

Section 552.136 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.” Gov't Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money,

goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). However, as with section 552.130, section 552.136 protects the privacy interests of individuals, and the right to privacy lapses at death. *See Moore*, 589 S.W.2d at 491. Therefore, to the extent the PIN number and credit card number we have marked pertain to an account in which a living individual has an interest, the department must withhold them under section 552.136. However, if this information pertains solely to a deceased individual, it may not be withheld under section 552.136.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the marked private financial information relates only to the financial interests of a deceased individual, this information is not protected by common-law privacy and may not be withheld on that basis. To the extent the Texas license plate numbers you have marked pertain to vehicles in which a living person has an ownership interest, they must be withheld under section 552.130 of the Government Code. The department must withhold the information we have marked under section 552.136 of the Government Code if it pertains to an account in which a living individual has an interest. The remaining information must be released.

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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 392867

Enc. Submitted documents

c: Requestor
(w/o enclosures)