



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2012

Ms. Nanette Rodriguez
Deputy City Attorney
City of Temple
2 North Main, Suite 308
Temple, Texas 76501

OR2012-05392

Dear Ms. Rodriguez:

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# 450727.

The City of Temple (the "city") received a request for information related to a fatal accident. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ 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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). You indicate the request for information was received on January 23, 2012. Thus, the city's ten-business-day deadline to request an opinion was February 6, 2012. However, you did not request a decision from this office until February 8, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of

¹Although you do not specifically raise sections 552.101 and 552.130 of the Government Code, you have marked information for which you appear to claim these exceptions. Accordingly, we understand you to raise these exceptions.

documents sent via first class United States mail). Thus, the city failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, 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. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code for the submitted information, this 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. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold any of the submitted information under section 552.108. However, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these sections to the information at issue.

We next note the submitted information includes a search warrant and a court order, which we have marked, that have been signed by a judge. Section 552.022(a)(17) of the Government Code provides for the required public disclosure of "information that is also contained in a public court record" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you have marked some of the information in the court order under section 552.101 of the Government Code, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Because the court order contains information subject to section 552.130 of the Government Code, which makes information confidential under the Act, we will address the applicability of this exception to the court order and also to the information not subject to section 552.022.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). However, we note this exception protects personal privacy. In this instance, the requestor is the authorized representative of some of the individuals listed in the submitted incident report. Therefore, the requestor has a right of access under section 552.023 of the Government Code to his clients' motor vehicle record information, and the city may not withhold that information

under section 552.130 of the Government Code. *See generally id.* § 552.023; Open Records Decision No. 481 at 4 (1987). Therefore, the city must withhold only the motor vehicle record information we have marked under section 552.130.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the common-law right of 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82.

The type 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 some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Upon review, we find some of the information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information you seek to withhold is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the information we have marked (1) under section 552.130 of the Government Code and (2) under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.²

²We note the information being released contains social security numbers. 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. Gov’t Code § 552.147(b). We further note the information being released contains confidential information to which the requestor has a right of access. If the city receives another request for this information from a different requestor, then the city should again seek a decision from this office.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 450727

Enc. Submitted documents

c: Requestor
(w/o enclosures)