



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2012

Mr. Jason King  
Counsel for the City of Glen Heights  
Akers & Boulware-Wells, LLP  
Building E, Suite 102  
6618 Sitio Del Rio Boulevard  
Austin, Texas 78730

OR2012-12122

Dear Mr. King:

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# 460770.

The Glenn Heights Police Department (the "department"), which you represent, received three requests, including two from the same requestor, for a specified investigation file. You state some information has been released. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments submitted by an interested party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. This office has found that 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 the information we have indicated is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

The interested third party raises sections 552.109 and 552.117 of the Government Code. Section 552.109 of the Government Code excepts from public disclosure “[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]” Gov’t Code § 552.109. This office has held the test to be applied to information under section 552.109 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation*, 540 S.W.2d at 685, for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. As noted above, common-law privacy protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. Upon review, we find no portion of the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Consequently, the department may not withhold any part of the remaining information under section 552.109 of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. See Gov’t Code § 552.117(a)(1). We note, however, that section 552.117 applies only to records that a governmental body is holding in an employment capacity. Upon review, we find the information the interested third party seeks to withhold does not consist of the home address, home telephone number, emergency contact information, social security number, or family member information of department employees. Therefore, we find section 552.117(a)(1) of the Government Code does not apply to the information at issue, and the department may not withhold any portion of the remaining information under section 552.117(a)(1) of the Government Code.

We note, however, the remaining information contains the personal information of department officers. Section 552.117(a)(2) of the Government Code excepts from public

disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. *Id.* § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note that section 552.117 encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code; except the marked cellular telephone number may only be withheld if the service is not paid for by a governmental body.

We note some of the remaining information is subject to sections 552.102, 552.130 and 552.137 of the Government Code.<sup>2</sup> Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the department must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.

Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1)-(2). We find the department must withhold the portions of the submitted video recordings that depict discernible license plate numbers, the portions of the submitted audio recordings we have indicated, and the information we have marked in the submitted documents under section 552.130 of the Government Code.

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). The e-mail address we have marked is not of the type excluded by section 552.137(c).

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

Accordingly, the department must withhold the e-mail address we have marked under section 552.137, unless the owner affirmatively consents to its public disclosure.<sup>3</sup>

We note that a portion of the submitted information is 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. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). 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.

We also note the second requestor is a city council member. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. See Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. See ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. See Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); see also Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). Common-law privacy and sections 552.102, 552.117, and 552.137 of the Government Code do not have specific release provisions governing public release of information. Therefore, pursuant to the intergovernmental transfer doctrine, the department has discretion to release to the second requestor the information marked as confidential under common-law privacy and sections 552.102, 552.117 and 552.137 of the Government Code. However, we note the motor vehicle record information is subject to section 552.130 of the Government Code, which has its own access provision governing release of information. See Gov't Code § 552.130(b). Consequently, the motor vehicle record information at issue must be withheld if the department chooses to release the information at issue pursuant to the interagency transfer doctrine.

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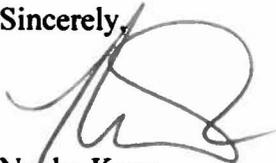
<sup>3</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without requesting a decision from this office.

In summary, the department must withhold (1) the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy, (2) the information we have marked under section 552.117(a)(2) of the Government Code, (3) the dates of birth we have marked under section 552.102 of the Government Code; (4) the portions of the submitted video recordings that depict discernible license plate numbers, the portions of the submitted audio recordings we have indicated, and the information we have marked in the submitted documents under section 552.130 of the Government Code, and (5) the e-mail address we have marked under section 552.137, unless the owner affirmatively consents to its public disclosure. The remaining information must be released; however, any information subject to copyright only may be released in accordance with copyright law. However, with the exception of the information subject to section 552.130 of the Government Code, the department may exercise its discretion to release the submitted information to the second 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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 460770

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)