



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 5, 2013

Mr. Jason M. Rammel  
Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2013-02055

Dear Mr. Rammel:

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# 477951.

The City of Smithville (the "city"), which you represent, received a request for information pertaining to a specified investigation. You state the city has released some of the requested information but 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 information.<sup>1</sup>

Initially, we note it appears the city has redacted social security numbers from Exhibit B pursuant to section 552.147 of the Government Code. 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. Exhibit B-2, the first two recordings in Exhibit B-4, and Exhibits B-4 through B-7 also contain social security numbers. You represent the city does not have the technical capability to redact social security numbers from the submitted video recordings. Thus, based on this representation, we conclude the city is not required to release Exhibit B-2, the first two

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<sup>1</sup>We note the city has redacted a Texas driver's license number. The Texas legislature amended section 552.130 of the Government Code effective September 1, 2011, to allow a governmental body to redact the information described in subsection 552.130(a)(1) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

recordings in Exhibit B-4, and Exhibits B-4 through B-7 to the requestor pursuant to section 552.147(b) of the Government Code.<sup>2</sup>

Next, you acknowledge, and we agree, the city failed to comply with the procedural requirements of section 552.301 of the Government Code. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome this presumption.<sup>3</sup> Therefore, we will consider whether these sections require the city to withhold 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 information protected by other statutes, including section 730.004 of the Transportation Code. Section 730.004 provides, "[n]otwithstanding any other provision of law to the contrary, including [the Act], except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. Section 730.004 applies only to an "agency" that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established the city compiles or maintains motor vehicle records. Therefore, section 730.004 does not apply to the city.

Pursuant to section 730.007, personal information may be disclosed to an authorized recipient under certain circumstances, including a governmental agency collecting information to carry out its functions. *See id.* § 730.007(a)(2)(A)(I). Section 730.013 of the Transportation Code provides for purposes of chapter 730 of the Transportation Code:

(a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical

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<sup>2</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

format the personal information was disclosed to the recipient by the applicable agency.

(b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.

*Id.* § 730.013(a), (b). You do not represent the city received the information at issue from an agency that compiles or maintains motor vehicle records for purposes of section 730.013. Accordingly, the city may not withhold any part of the submitted information under section 552.101 of the Government Code in conjunction with section 730.013 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). However, section 552.130 of the Government Code is applicable to some of the information you seek to withhold under chapter 730.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). The city must withhold the motor vehicle record information we have marked in Exhibit B under section 552.130. The remaining information does not contain motor vehicle record information. Therefore, the city may not withhold any of the remaining information under section 552.130.

You assert some of the remaining information is confidential under common-law privacy. 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. *See 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 satisfied. *Id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included

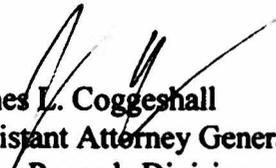
information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. However, the public has a legitimate interest in knowing the general details of a crime. See generally *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994)); *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.— Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (public has legitimate interest in details of crime and police efforts to combat crime in community); Open Records Decision No. 611 at 1 (1992) (family violence is a crime, not private matter). Upon review, we find that, while the information you assert is confidential under common-law privacy may be highly intimate or embarrassing, it is of legitimate concern to the public in this case. Therefore, none of the this information is confidential under common-law privacy, and the city may not withhold it from release under section 552.101 on that ground.

To conclude, the city is not required to release Exhibit B-2, the first two recordings in Exhibit B-4, and Exhibits B-4 through B-7 to the requestor pursuant to section 552.147(b) of the Government Code. The city must withhold the information we have marked in Exhibit B under section 552.130 of the Government Code. The city must release the remaining information.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 477951

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

