



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2013

Ms. Cary Grace
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2013-03750

Dear Ms. Grace:

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# 480550.

The Austin Police Department (the "department") received a request for information pertaining to a specified accident. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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. *See id.* § 552.301(e)(1)(D). The department received the request for information on October 22, 2012. Accordingly, you were required to provide the information required by section 552.301(b) by November 5, 2012, and the information required by section 552.301(e) by November 12, 2012. The envelope in which the department provided the information required by subsections 552.301(b) and (e) is postmarked December 20, 2012. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act 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 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); Open Records Decision No. 319 (1982). The presumption information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons for non-disclosure, 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 information other statutes make confidential. Section 730.004 of the Transportation Code provides that “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. “Personal information” includes a person's name, address, and driver identification number, but not the zip code. *Id.* § 730.003(6), .003(5) (“person” is an individual, organization, or entity but does not include this state or an agency of this state). The Texas Department of Motor Vehicles (the “DMV”) and the Texas Department of Public Safety (the “DPS”) are each an “agency” for purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). You state a portion of the submitted information was obtained by the department from the DMV and the DPS for use by the department via the Texas Law Enforcement Telecommunication System in carrying out its governmental functions. *See id.* § 730.007(a)(2)(A)(I) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not redisclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a),

(d). Accordingly, we find with the exception of the zip code we have marked for release, the department must withhold the information you have marked in blue under sections 730.004 and 730.013 of the Transportation Code in conjunction with section 552.101 of the Government Code.

Section 552.101 also 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 satisfied. *Id.* at 681-82. 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. Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon our review, we agree the information you have marked in yellow, in addition to the information we have marked, consists of personal financial details that are not of legitimate public interest. Therefore, we conclude the department must withhold this information under section 552.101 in conjunction with common-law privacy.

You state the department will withhold the information you have marked in orange pursuant to section 552.130(c) of the Government Code and the Texas license plate number you have marked in purple pursuant to Open Records Decision No. 684 (2009). Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Open Records Decision No. 684 permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision. ORD 684. However, we note the vehicle identification numbers ("VINs") as well as the additional motor vehicle record information you have marked in orange are not subject to section 552.130(c) and, therefore, may not be withheld without requesting a decision from this office. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document

issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we conclude, in addition to the Texas license plate number you have marked, the department must withhold the VINs and additional motor vehicle record information you have marked, and the additional information we have marked, under section 552.130.

In summary, with the exception of the zip code we have marked for release, the department must withhold the information you have marked in blue under sections 730.004 and 730.013 of the Transportation Code in conjunction with section 552.101 of the Government Code. The department must withhold the information you have marked in yellow, in addition to the information we have marked, under section 552.101 in conjunction with common-law privacy. The department must withhold the information you have marked in purple and orange, and the additional information we have marked, under section 552.130 of the Government Code. The department must release the remaining information.¹

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

¹We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, if the department receives another request for this information from an individual other than the requestor or his client, the department must again seek a decision from this office.

Ref: ID# 480550

Enc. Submitted documents

cc: Requestor
(w/o enclosures)