



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2013

Ms. Samantha Dyal
Counsel for the City of Schertz
Fulbright & Jaworski, L.L.P.
300 Convent Street, Suite 2100
San Antonio, Texas 78205-3792

OR2013-06849

Dear Ms. Dyal:

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# 485494.

The Schertz Police Department (the "department"), which you represent, received a request for information regarding a specified automobile accident. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.1175, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed 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. Section 552.101 of the Government Code encompasses common-law privacy, which 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. 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 and embarrassing by the Texas Supreme Court in *Industrial Foundation* included

¹We note, although you raise section 552.117(a)(2) for a portion of the submitted information, section 552.1175 is the proper exception to raise in this instance because the department does not hold the information at issue in an employment capacity. Additionally, we understand you to raise section 552.102 of the Government Code based on the substance of your arguments.

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. You seek to withhold the dates of birth you have marked in the submitted information under common-law privacy. We note the dates of birth of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, and dates of birth not private). Upon review, we find the department has failed to demonstrate how the marked dates of birth are highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code 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, 348 (Tex. 2010). Thus, under *Texas Comptroller*, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. The information you have marked is held by the department in a law enforcement context. Accordingly, section 552.102(a) is not applicable and the information you have marked may not be withheld on that basis.

Section 552.1175 of the Government Code applies to information pertaining to peace officers that the department does not hold in an employment context. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). You assert the information you have marked pertains to licensed peace officers under article 2.12 of the Texas Code of Criminal Procedure. If the individuals to whom this information pertains are licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b), the department must withhold the information you have marked under section 552.1175 of the Government Code. However, if the individuals are not licensed peace officers or no election is made, the department may not withhold the marked information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides, in relevant part:

(a) 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. We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because privacy is a personal right that lapses at death, the right to privacy does not encompass information that relates to only a deceased individual. Accordingly, information pertaining solely to a deceased individual may not be withheld on privacy grounds. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, section 552.130 is not applicable to the driver's license information of deceased individuals in the submitted information, and the department may not withhold this information on that basis. We have marked information pertaining to a deceased individual's vehicle. If a living individual owns an interest in the vehicle, the department must withhold the information we have marked pertaining to that vehicle under section 552.130. If no living individual owns an interest in the vehicle, then the marked information may not be withheld under section 552.130. Additionally, the department must withhold the information we have marked and indicated pertaining to living individuals under section 552.130 of the Government Code. However, we find no portion of the remaining information you have marked consists of motor vehicle record information for the purposes of section 552.130 of the Government Code, and the department may not withhold any of the remaining information you have marked on that basis.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147. Therefore, the department may withhold the information you have marked under section 552.147 of the Government Code.²

In summary, the department must withhold the information you have marked under section 552.1175 of the Government Code if the individuals to whom this information pertains are licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b). The department must withhold the information we marked and indicated under section 552.130 of the Government Code; however the department may not withhold the information pertaining to the deceased individual's vehicle if a living person does not own an interest in the vehicle. The department may withhold the information you have marked under section 552.147 of the Government Code. 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 485494

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Section 552.147(b) of the Government Code authorizes a governmental body to withhold, without the necessity of requesting an attorney general ruling, a living individual's social security number.