



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2013

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2013-09238

Dear Ms. Middlebrooks:

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# 488953.

The City of Dallas (the "city") received a request for all records related to contractors who reported to a named individual in the city's Communication and Information Services Department during a specified period of time. You claim portions of the submitted information are excepted from disclosure under sections 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the obligations of the city 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* Gov't Code § 552.301. 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. *See id.* § 552.301(b). The city received the

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

request for information on March 11, 2013. Thus, the city was required to request a decision from this office and state the applicable exceptions by March 25, 2013. However, the envelope in which the city submitted its request for a ruling was postmarked March 26, 2013. *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 city 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 section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). However, you assert some of the submitted information is subject to sections 552.117, 552.136, and 552.137 of the Government Code. We note portions of the submitted information are subject to section 552.101 of the Government Code.<sup>2</sup> Because sections 552.101, 552.117, 552.136, and 552.137 can provide compelling reasons to withhold information, 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 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 demonstrated. *See 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 personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (personal financial information includes choice of particular insurance carrier). Upon review, we find the information we have marked is highly intimate or embarrassing and not

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

of legitimate public concern. Therefore, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former official or employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1); Open Records Decision No. 622 (1994). Information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Open Records Decision No. 530 at 5 (1989). However, section 552.117 applies only to records that a governmental body holds in an employment capacity. *See* Open Record Decision Nos. 532 (1989) (stating purpose of predecessor statute of section 552.117 is to protect certain information during and after employment relationship), 530 (discussing interplay between sections 552.024 and 552.117), 455 (1987). We note section 552.117 does not apply to an individual's work telephone number. We further note a portion of the information you seek to withhold pertains to an independent contractor who has contracted with the city. Thus, we conclude the city has failed to establish this individual is an employee or official of a governmental body for purposes of section 552.117. Accordingly, the city may not withhold any of the submitted information under section 552.117 of the Government Code.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Therefore, the city must withhold the credit card numbers we have marked under section 552.136 of the Government Code. However, we find the city has failed to demonstrate how any of the remaining information constitutes an access device number for purposes of section 552.136. Accordingly, we conclude the city may not withhold any of the remaining information under section 552.136 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 owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). We note this exception is not applicable to an e-mail address “provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent [.]” *Id.* § 552.137(c)(1). Upon review, we find the e-mail addresses you have marked are among the types specifically excluded by section 552.137(c). Therefore, the city may not withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.136 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 488953

Enc. Submitted documents

c: Requestor  
(w/o enclosures)