



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2014

Ms. Amanda Pell
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2014-19226

Dear Ms. Pell:

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# 540584 (Baytown PIR No. 3010).

The Baytown Police Department (the "department") received a request for the complete file of a specified investigation.¹ You state the department will make some of the requested information available to the requestor with redactions made pursuant to sections 552.130(c) and 552.147(b) of the Government Code² and pursuant to Open Records Decision No. 684 (2009).³ You claim the submitted information is excepted from disclosure under

¹As you have not submitted a copy of the request for information for our review, we take our description from your brief to our office.

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. 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). 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. *Id.* § 552.147(b).

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code.

sections 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, the department failed to comply with the requirements of section 552.301 of the Government Code in requesting this decision. Gov't Code § 552.301(b), (e). 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 information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also 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). This statutory presumption can generally be overcome when 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). You raise sections 552.130 and 552.137 of the Government Code, which can provide compelling reasons to overcome the presumption of openness for non-disclosure under section 552.302. We also note some of the submitted information is subject to section 552.101 of the Government Code, which can also provide a compelling reason for non-disclosure under section 552.302.⁴ Thus, we will address 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. Section 552.101 encompasses the doctrine of 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Upon review, we find parts of the audio portions of three of the submitted video recordings satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. The audio portions of the recordings are intertwined with the video portions of the recordings. You state the department does not have the technological capability to redact information from the recordings. Accordingly, we conclude the department must withhold the three

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

recordings we have marked in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code 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). The audio portion of the video recording you have marked contains a driver's license number that is subject to section 552.130. The audio portion of the recording is intertwined with the video portion of the recording. You state the department does not have the technological capability to redact the driver's license from the recording. Accordingly, we conclude the department must withhold the recording you have marked in its entirety under section 552.130.

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). *Id.* § 552.137(a)-(c). The audio portions of the remaining four video recordings contain e-mail addresses of members of the public. The e-mail addresses at issue are not of the types specifically excluded by section 552.137(c). The audio portions of the recordings are intertwined with the video portions of the recordings. You state the department does not have the technological capability to redact the e-mail addresses from the recordings. Accordingly, we conclude the department must withhold the remaining four video recordings in their entirety under section 552.137 unless the owners of the addresses affirmatively consent to their release.

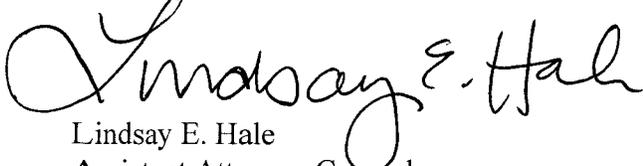
In summary, the department must withhold the three recordings we have marked in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the recording you have marked in its entirety under section 552.130 of the Government Code. The department must withhold the four recordings you have marked in their entirety under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.⁵

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.

⁵In the event the owners of the e-mail addresses at issue consent to the release of their e-mail addresses, we note some of the recordings at issue contain social security numbers. As previously noted, 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. Gov't Code § 552.147(b).

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, 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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 540584

Enc. Submitted documents

c: Requestor
(w/o enclosures)