



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 19, 2015

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law & Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2015-09673

Dear Ms. McClellan:

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# 564010 (DPD request 2015-02083).

The Dallas Police Department (the "department") received a request for information pertaining to disciplinary actions taken against officers in connection with a use of force during a specified period of time. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.101 of the Government Code excepts "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

¹We note the department failed to comply with section 552.301 of the Government Code in requesting a ruling; however, sections 552.101 and 552.136 of the Government Code are mandatory exceptions that constitute compelling reasons to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. See Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the department's arguments against disclosure.

²We 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 that those records contain substantially different types of information than that submitted to this office.

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 the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code provides, “[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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We understand the employee identification numbers you have marked are used in conjunction with one additional digit to access city credit union bank accounts. We therefore conclude the department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.136 of the Government Code. The department 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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 564010

Enc. Submitted documents

c: Requestor
(w/o enclosures)