



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 29, 2015

Ms. LeAnn M. Quinn  
City Secretary  
City of Cedar Park  
450 Cypress Creek Rd.  
Cedar Park, Texas 78613

OR2015-12970

Dear Ms. Quinn:

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# 569088 (Ref. No. 15-714).

The City of Cedar Park (the "city") received a request for information concerning an incident at a specified address. You state the city will release to the requestor the basic information in the responsive police report. You also state the city will withhold the marked driver's license, vehicle identification, and license plate information under section 552.130(c) of the Government Code, as well as the marked social security numbers under section 552.147(b) of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request, a governmental body

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<sup>1</sup>Section 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. *See* 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. *See id.* § 552.147(b).

must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). The city states it received the request for information on March 30, 2015. The city does not inform us it was closed for business on any of the days that follow the date of its receipt of the request. Accordingly, the city's ten-business-day deadline was April 13, 2015. However, the city submitted the information required under section 552.301(b) in an envelope bearing a post-office cancellation mark of April 20, 2015. *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). Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). The city claims sections 552.108 and 552.137 of the Government Code for the submitted information. However, section 552.108 is discretionary in nature. It serves to protect a governmental body's interests and may be waived and thus, does not constitute a compelling reason to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the city may not withhold any portion of the submitted information under section 552.108 of the Government Code. However, the city also claims section 552.137 of the Government Code for the submitted information. This exception can provide a compelling reason to overcome the presumption of openness. We also will consider whether section 552.101 applies to a portion of the information. Section 552.101 provides a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of sections 552.101 and 552.137 to the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> Gov't Code § 552.101.

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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

Section 552.137 of the Government Code provides in part as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

...

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract;

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public; or

(5) provided to a governmental body for the purposes of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of this code, or receiving orders or decisions from a governmental body.

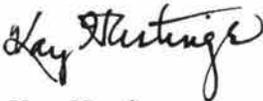
Gov't Code § 552.137(a), (c). Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Subsection (c) does not apply to the information at issue. The city must, therefore, withhold the marked e-mail addresses of members of the public under section 552.137(a).

In summary, the city must withhold the information we marked based on section 552.101 in conjunction with the common-law right to privacy. The city must withhold the marked e-mail addresses of members of the public under section 552.137(a). The city must release the remaining information to the requestor.

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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/sdk

Ref: ID# 569088

Enc. Submitted documents

c: Requestor  
(w/o enclosures)