



November 9, 1999

Ms. Lilia Ledesma-Gonzalez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR99-3187

Dear Ms. Ledesma-Gonzalez:

You have asked 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# 129276.

The City of McAllen (the "city") received a request for a "list of citations consisting of names and phone #'s of moving violations dating from 6-1-99 to 8-1-99." In response to the request, you submit to this office for review a copy of the responsive information. You assert that the requested information is excepted from disclosure based on section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

At the outset we address the city's assertion that "the requested information does not exist in an open record form of document. This list was created by the police department for this requestor."¹ A governmental body is not expected to produce information which does not exist, nor does the act require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992), 555 (1990), 362 (1983). Nor does the act require the preparation of information in the form requested by a member of the public. Open Records

¹Section 552.231 of the Government Code sets out procedures for advising the requestor of estimated costs and delays when responding to requests for information that require programming or manipulation of data.

Decision No. 145 (1976). However, since the city has “assembled” responsive information, we must consider the applicability of the claimed exception for the submitted document.²

We next address your claimed exception pursuant to section 552.101 of the Government Code. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses both common-law and constitutional privacy. Information may be withheld as protected by the common-law right of privacy if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Constitutional privacy doctrine is far narrower than its common-law counterpart. The constitutional right to privacy protects two interests: the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court, and the interest in avoiding disclosure of personal matters. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). Only information concerning the “most intimate aspects of human affairs” are within the scope of constitutional privacy. *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

After reviewing the submitted information, we do not find any information that is protected by privacy. *See* Open Records Decision Nos. 611 (1992) (public has legitimate interest in identity of persons who commit crime), 480 (1987) (public has an interest in knowing who owes money to governmental body). Furthermore, although the city claims that the submitted information is excepted from disclosure under section 552.101, the city has not indicated, and we are not aware of, any statute that would make the submitted information confidential.³ Therefore, the city may not withhold any of the submitted information under section 552.101 Government Code.

²Section 552.002(a) defines the term “public information” to include information that is “collected, assembled, or maintained . . . (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” Gov’t Code § 552.002(a). Furthermore, “public information,” as defined by section 552.002, must be produced for inspection or duplication or both, unless an applicable exception applies to the information. *See* Open Records Decision Nos. 565 (1990), 549 (1990), 470 (1987).

³Section 730.004 of the Transportation Code governs the release of “personal information” about any person obtained in connection with a motor vehicle record by an agency that maintains or compiles motor vehicle records. Section 552.130 (a)(1) of the Government Code prohibits the release of all information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state” except to the extent that such information is authorized to be disclosed as provided in chapter 730 of the Transportation Code. However, the driver’s name, violation, and phone number at issue here do not come within the definition of “personal information.” Transp. Code § 730.003(6).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 129276

Encl: Submitted document

cc: Ms. Jane Canning
Rio Grande Defensive Driving School
2220 Nolana, Suite K
McAllen, Texas 78504
(w/o enclosures)