



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2005

Ms. Moira Schilke  
Assistant District Attorney  
Dallas County District Attorney's Office  
Administrative Building, 5<sup>th</sup> Floor  
411 Elm Street, Suite 500  
Dallas, Texas 75202-3384

OR2005-09515

Dear Ms. Schilke:

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# 234662.

The Dallas County Constable for Precinct 5 (the "constable") received two requests from the same requestor for fourteen categories of information related to two specified causes of action. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the constable's procedural obligations under the Act. Subsections 552.301(a) and (b) of the Government Code provide as follows:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). Further, section 552.301(d)(2) of the Government Code requires a governmental body that requests an attorney general decision to provide the requestor with a copy of its written communication to the attorney general not later than the tenth business day after receiving the requestor's written request for information. Gov't Code § 552.301(d)(2).

You inform us that the constable received the first request for information on August 3, 2005. As such, the tenth business day following the department's receipt of the first written request was August 17, 2005. You state that you provided a copy of your written communication with this office to the requestor in a letter that you placed with the "Dallas County mail slot" on August 17, 2005. However, the requestor asserts, and you acknowledge, that this letter was not postmarked until August 19, 2005. Based on this postmark date, we have no choice but to find that the constable failed to comply with the Act's procedural requirements with respect to the requestor's first request. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Also, you inform us that the constable received the second request for information on August 16, 2005. Based on this date, the tenth business following the receipt of the second request was August 30, 2005. However, your letter seeking a decision from this office with respect to the information sought by the second request was postmarked on September 7, 2005. As such, we find that the constable failed to comply with the procedural requirements of section 552.301 of the Government Code with respect to both requests for information.

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 the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, your claim under section 552.103 is not a compelling reason for non-disclosure under section 552.302, and none of the information at issue may be

withheld under this exception. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). However, we note that portions of the submitted records are subject to sections 552.101, 552.130, and 552.136 of the Government Code. Because these exceptions can provide compelling reasons to withhold information, we will address their applicability to the submitted information.<sup>1</sup>

Section 552.101 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 the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that information that reflects an individual’s personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. Open Records Decision Nos. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). This office has also ruled, however, that the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). We have marked personal financial information in the submitted documents that the constable must withhold under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a driver’s license or motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130. Accordingly, the constable must withhold Texas motor vehicle record information we have marked pursuant to section 552.130.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, 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. We have marked the account numbers that the constable must withhold pursuant to section 552.136.

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exceptions like sections 552.101, 552.130, and 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We note that some of the remaining information at issue is subject to copyright law. A custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the constable must withhold (1) the personal financial information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy; (2) the Texas motor vehicle record information we have marked in accordance with section 552.130 of the Government Code; and (3) the account numbers that we have marked under section 552.136 of the Government Code. The constable must release the remaining submitted information; however, in releasing information that is protected by copyright, the constable must comply with copyright law.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/krl

Ref: ID# 234662

Enc. Submitted documents

c: Mr. Andrew R. Korn  
Korn, Bowdich & Diaz, L.L.P.  
4221 Avondale Avenue  
Dallas, Texas 75219  
(w/o enclosures)