



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2006

Mr. John T. Patterson  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2006-04889

Dear Mr. Patterson:

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# 248808.

The City of Waco (the "city") received a request for information relating to a named individual. You inform us that the city has released some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. You also assert that some of the responsive information is not subject to disclosure under the Act. We have considered your arguments and have reviewed the information you submitted.

Initially, we address your statement that the submitted documents contain grand jury information. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and is therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and are therefore not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983); *but see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). However, the fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or

entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* Open Records Decision No. 513 (1988). Thus, to the extent that the city has possession of any of the submitted information as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. This decision does not address the public availability of any such information. To the extent that the city does not have possession of the submitted information as the grand jury's agent, the information is subject to the Act and must be released, unless it falls within an exception to public disclosure.

Next, we address the city's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; and (2) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ).

You concede that the city failed to submit arguments in support of its claimed exceptions and the information that it seeks to withhold within the fifteen-business-day period prescribed by section 552.301(e). The submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when the 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). As the city's claims under sections 552.101 and 552.130 of the Government Code can provide compelling reasons for non-disclosure under section 552.302, we will address these exceptions.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 571.206 of the Finance Code, which provides as follows:

Information obtained during an examination or inspection authorized by this subchapter is confidential and privileged except for use by the [consumer credit] commissioner or in a criminal investigation or prosecution.

Fin. Code § 371.206. Additionally, section 371.204 of the Finance Code requires a pawnbroker to allow a peace officer to inspect the pawnbroker's books, accounts, papers, correspondence, or other records that relate to the business of the pawnbroker at any reasonable time without judicial writ or other process. You indicate that some of the submitted information was obtained by a peace officer in connection with an examination or inspection under section 371.204. Based on your representations and our review of the information at issue, we agree that the information that you have marked is confidential under section 371.206 of the Finance Code and must be withheld from disclosure under section 552.101 of the Government Code. We have marked additional information that must also be withheld on this basis.

Section 552.101 also encompasses section 1703.306 of the Occupations Code, which provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. You contend that the submitted documents also contain information acquired from polygraph examinations. However, we find that you have not established that the submitted documents contain any information that was acquired from a polygraph

examination. We therefore conclude that the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

You also raise section 552.101 in conjunction with the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. See Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

Having considered your arguments and reviewed the information that you contend is private, we have marked the submitted information that the city must withhold under section 552.101 of the Government Code in conjunction with common law privacy. We conclude that none of the remaining information may be withheld on this basis under section 552.101.

Lastly, we address section 552.130 of the Government Code, which exempts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130(a)(2). You seek to withhold Texas license plate information under section 552.130. We note, however, that the information in question is generally related to an individual whom you state is deceased. Section 552.130 protects privacy, which is a personal right that lapses at the person's death. See Attorney General Opinion JM-229 (1984); Open Records Decision No. 272 (1981). Thus, section 552.130 is applicable only if a living individual owns an interest in a vehicle to which Texas license plate information is related. Therefore, to the extent that the license plate information that you have marked was issued by agency of this state and pertains to a vehicle in which a living individual owns an interest, we agree that such information must be withheld under section 552.130. To the extent that the license plate information was not issued by an agency of this state or does not relate to such a vehicle, it may not be withheld under section 552.130.

In summary: (1) any information held by the city as an agent of the grand jury is in the grand jury's constructive possession and is not subject to disclosure under the Act; (2) the city must withhold the information that is confidential under section 552.101 of the Government Code

in conjunction with section 371.206 of the Finance Code; (3) the city must also withhold the information that is protected by common law privacy under section 552.101; and (4) Texas license plate information relating to a vehicle in which a living individual owns an interest must be withheld under section 552.130 of the Government Code. The rest of the submitted information must be released.

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 10 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).

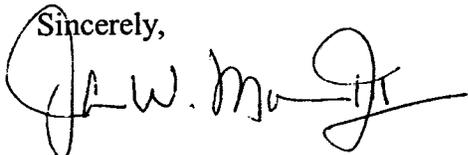
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/er

Ref: ID# 248808

Enc: Submitted documents

c: Ms. Elyse Gallagher  
c/o Mr. John T. Patterson  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570  
(w/o enclosures)