



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 30, 2008

Mr. Ricardo Gonzalez  
Interim City Attorney  
City of Edinburg  
P.O. Box 1079  
Edinburg, Texas 78540

OR2008-13390

Dear Mr. Gonzalez:

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# 323415.

The City of Edinburg (the "city") received a request for (1) information regarding a statement given by a named individual on a particular date, and (2) search warrant affidavits and police reports filed in case numbers 07-28328, 07-28327, 07-13955, and 07-15602. You state that some responsive information has been released to the requestor. We note that you have redacted a social security number pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim that some of the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that the submitted information contains search and arrest warrants which are not responsive to the instant request for information. We have marked these documents, which the city need not release in response to this request and this ruling will not address that information.

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<sup>1</sup>Section 552.147(b) 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. Gov't Code § 552.147(b).

You indicate that some of the submitted information may be the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-13289 (2008). To the extent the pertinent facts and circumstances have not changed since the issuance of that ruling, the city may continue to rely on Open Records Letter No. 2008-13289 for the information that was at issue in that ruling. See Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as a previous determination when (1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); (2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; (3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and (4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). To the extent the submitted information is not the same as the information previously ruled upon, we will address your arguments.

Section 552.101 of the Government Code excepts from disclosure “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, such that its release 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 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. *Id.* at 683. This office has also found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, this office has found that the names, home addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (absent special circumstances, home addresses and telephone numbers of private citizens are generally not protected under the Act’s privacy exceptions). We also note that dates of birth are not highly intimate or embarrassing. See *Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629 (Tex. App.—2008, n.p.h.) (“We hold that date-of-birth information is not confidential[.]”); see also Attorney General Opinion MW-283 (1980) (public employee’s date of birth not protected under privacy); Open Records Decision No. 455 at 7 (1987) (birth dates, names, and addresses are not protected by privacy).

You seek to withhold the addresses of homes that were the subject of warrants. You believe that these addresses may be protected by the doctrine of false light privacy because “these warrants did not result in arrests.” We note, however, that false light privacy is not an

actionable tort in the State of Texas. *See Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). Therefore, a governmental body may not withhold information from disclosure merely because its release might place an individual in a false light. *See Open Records Decision No. 579 (1990)*.

You also seek to withhold the identifying information of an individual who filed a complaint against a police officer and is also the complainant in offense report number 07-45178. However, as noted above, this office has found that the names, home addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. *See ORD 455; see also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (deeming public identification and description of complainant). Furthermore, the public has a legitimate interest in information that relates to public employees and their employment-related behavior. *See Open Records Decision Nos. 405 at 2 (1983)* (manner in which public employee performed his or her job cannot be said to be of minimal public interest), 444 at 4 (1986) (public employee's personnel file information will generally be available to public regardless of whether it is highly intimate or embarrassing), 470 at 4 (1987) (public employee's job performance does not generally constitute private affairs), 473 at 3 (1987) (fact that public employee receives less than perfect or even very bad evaluation not protected by common-law privacy), 542 at 5 (1990) (information regarding public employee's qualifications is of legitimate public concern).

Thus, we find that none of the information you have marked constitutes highly intimate or embarrassing information that is of no legitimate concern to the public. Therefore, the city may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

We also note some of the submitted information is subject to section 552.130 of the Government Code, which excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1)-(2). Therefore, the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the city may continue to rely on Open Records Letter No. 2008-13289 for the information that was at issue in that ruling. The city must withhold the information we have marked under section 552.130 of the Government Code. The remaining responsive information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 323415

Enc. Submitted documents

c: Mr. Jeremy Roebuck  
1400 Nolana Avenue  
McAllen, Texas 78504  
(w/o enclosures)