



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2008

Ms. Catherine Zellers  
City Attorney's Office  
City of Weatherford  
P.O. Box 255  
Weatherford, Texas 76086

OR2008-13949

Dear Ms. Zellers:

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# 325196.

The Weatherford Police Department (the "department") received two requests from the same requestor for information relating to a traffic accident involving two named individuals. You state that some of the requested information either has been or will be released. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially, we note that the department did not comply with section 552.301 of the Government Code in requesting this decision. 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. *See* Gov't Code § 552.301(a). Under section 552.301(b), the governmental body must ask for the attorney general's decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). 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).

In this instance, the department's ten-business-day deadline under section 552.301(b) was August 12, 2008. The department requested this decision by U.S. Mail post-marked August 13. Thus, the department did not comply with section 552.301, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when 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). Section 552.108 of the Government Code, which the department raises, is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Gov't Code § 552.007; Open Records 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 Gov't Code § 552.108 subject to waiver). The department's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. In failing to comply with section 552.301, the department has waived section 552.108 and may not withhold any of the submitted information under that exception. The applicability of sections 552.101 and 552.130 of the Government Code, which the department also raises, can provide compelling reasons for non-disclosure. Accordingly, we will address sections 552.101 and 552.130.

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. You raise section 552.101 in conjunction with common-law privacy, which protects information that 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 types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in 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 generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked medical information that is intimate or embarrassing and not a matter of legitimate public interest. The department must withhold that information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130(a)(1)-(2). We have marked Texas driver's license and motor vehicle information that the department must withhold under section 552.130. All corresponding Texas motor vehicle information depicted in the submitted photographs must also be withheld under this exception. Although the submitted information contains other Texas motor vehicle information, the requestor identifies himself as a representative of an insurer of the owner of the vehicle to which that information pertains. As such, the requestor has a right of access to information relating to the vehicle

owned by his insured person, and the department may not withhold that information from this requestor under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).<sup>1</sup>

We note that section 552.1175 of the Government Code may be applicable to some of the remaining information.<sup>2</sup> Section 552.1175 encompasses certain personal information relating to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See id.* § 552.1175(a)(1). Section 552.1175(b) provides as follows:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

*Id.* § 552.1175(b). We have marked a telephone number that the department must withhold under section 552.1175 if it is the home telephone or personal cell phone number of a peace officer who elects to restrict access to that information in accordance with section 552.1175(b).

We also note that section 552.136 of the Government Code is applicable to some of the remaining information.<sup>3</sup> Section 552.136(b) states that “[n]otwithstanding any other provision of [the Act], 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We have marked credit card account numbers that the department must withhold under section 552.136.

---

<sup>1</sup>Section 552.023(a) provides that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

<sup>2</sup>Unlike other exceptions to disclosure under the Act, this office will raise section 552.1175 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

<sup>3</sup>Section 552.136 also is a mandatory exception and may not be waived. Gov’t Code §§ 552.007, .352; ORD 674 at 3 n.4.

In summary: (1) the department must withhold the marked medical information under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the department must withhold the marked Texas driver's license and motor vehicle information, along with all corresponding Texas motor vehicle information depicted in the photographs, under section 552.130 of the Government Code; (3) the marked telephone number must be withheld under section 552.1175 of the Government Code if it the home telephone or personal cell phone number of a peace officer who elects to restrict access to that information in accordance with section 552.1175(b); and (4) the marked credit card account numbers must be withheld under section 552.136 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 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).

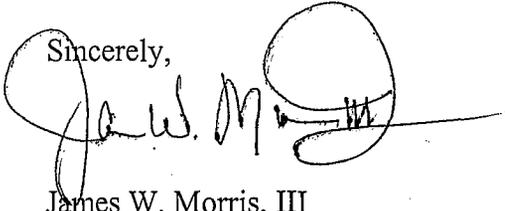
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, circular flourish at the end.

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

JWM/jh

Ref: ID# 325196

Enc: Submitted information

c: Mr. Ben Richards  
The Crawford Company  
P.O. Box 810839  
Dallas, Texas 75381  
(w/o enclosures)