



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2009

Ms. Eileen McPhee
Carls, McDonald, & Dalrymple, L.L.P.
901 South Mopac Expressway, Suite 500, Barton Oaks Plaza 2
Austin, Texas 78746

OR2009-02405

Dear Ms. McPhee:

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# 335915 (CMcD #1962).

The City of Georgetown (the "city"), which you represent, received a request for information pertaining to a specified incident report. You claim some of the requested information is exempted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note portions of the submitted information were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-02168

¹We note that although you do not raise sections 552.130 and 552.137 in your brief to this office, you have marked portions of the submitted information under this exception. Thus, we understand you to raise sections 552.130 and 552.137 of the Government Code.

²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2009). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the city must continue to rely on Open Records Letter No. 2009-02168 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will address the submitted 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. This exception encompasses the doctrine of 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). The type 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. The common-law right to privacy is a personal right that lapses at death, and therefore it does not encompass information that relates to a deceased individual. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). In this instance, most of the submitted information is related to a deceased individual. Additionally, we find that you have failed to demonstrate that any of the information at issue is intimate and embarrassing information pertaining to a living individual that is of no legitimate public interest. Therefore, none of the information at issue is protected by common-law privacy, and the city may not withhold it under section 552.101 of the Government Code on that basis.

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)-(b). Upon review, we conclude none the information at issue consists of Texas-issued motor vehicle record information for the purposes of section 552.130. Accordingly, the city may not withhold any of the information at issue under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code

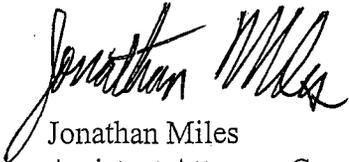
§ 552.137(a)-(c). The information at issue does not contain any e-mail addresses. Therefore, none of the information at issue is excepted from disclosure under section 552.137 of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2009-02168 as a previous determination and withhold or release the identical submitted information in accordance with that ruling. The remaining information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 335915

Enc. Submitted documents

c: Requestor
(w/o enclosures)