



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 24, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-05452

Dear Ms. Byles:

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# 340716 (Fort Worth PIR No. 1821-09).

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified accident. You state that most of the responsive information has been released to the requestor. You also state that you have redacted social security numbers under section 552.147.¹ You claim that the remaining information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially we note, and you acknowledge, that the department has failed to meet its obligation to request a decision from this office within the time periods prescribed by section 552.301 of the Government Code. *See Gov't Code* § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the 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 id.* § 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

¹Section 552.147(b) of the Government Code 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.

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). Because sections 552.101, 552.130, and 552.136 can provide compelling reasons to overcome the presumption of openness, we will apply these exceptions to the submitted information.

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 information protected by other statutes such as those contained in Chapter 772 of the Health and Safety Code. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. See Open Records Decision No. 649 (1996). We note that an address furnished by a caller is not confidential under section 772.318. Although you have marked a submitted compact disc under section 772.318, we find you have failed to establish that any of the information contained on the submitted compact disc of 9-1-1 calls constitutes information provided by a service provider. We note that the submitted 9-1-1 recording only contains address information provided by the callers. Thus, section 772.318 is not applicable to any portion of this recording, and it may not be withheld under section 552.101.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Additionally, this office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note, however, that the right of privacy is a personal right that lapses at death. Thus, information may not be withheld on the basis of the privacy interests of a deceased individual. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). But see Attorney General Opinion

JM-229 (1984) (if release of information about deceased person reveals highly intimate or embarrassing information about living persons, that information must be withheld under common-law privacy).

In this instance, the submitted documents contain motor vehicle lien information, which we have marked. To the extent that the marked information relates to a personal financial obligation of a living individual, it must be withheld under section 552.101 in conjunction with common-law privacy. To the extent that the marked lien information relates only to the financial interests of a deceased individual, it may not be withheld on that basis under section 552.101. You have also marked additional information which you seek to withhold under common-law privacy. We find, however, that you have failed to demonstrate that any of this remaining information you seek to withhold under this exception pertains to living individuals. Therefore, no portion of the remaining information is confidential under common-law privacy, and the department may not withhold it under section 552.101 of the Government Code.

You state the department has redacted certain Texas-issued motor vehicle record information relating to living individuals pursuant to the previous determinations issued in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (previous determinations). You seek to withhold additional motor vehicle record information, which you state lies beyond the scope of the previous determinations. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license [or] motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). We are unable to determine whether the information you have redacted pursuant to the previous determinations and the information you seek to withhold under section 552.130 relate to living individuals. If the information you have redacted and the information we have marked relate only to the deceased individuals then none of the submitted information may be withheld under section 552.130. If the information you have redacted and the information we have marked pertain to living individuals, those portions of the submitted information are confidential under section 552.130 of the Government Code and must be withheld.

Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

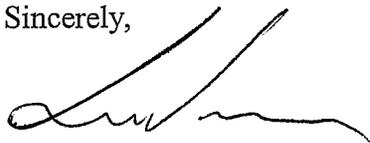
Gov't Code § 552.136. We note, however, that the purpose of section 552.136 is to protect the privacy interests of individuals, and because the right of privacy lapses at death, the insurance policy number of a deceased individual may not be withheld under section 552.136. *See Moore*, 589 S.W.2d at 491 (Texas does not recognize relational or derivative right of privacy). Although the submitted information contains an insurance policy number that pertains to a deceased individual, you state a living individual has an interest in the insurance policy number at issue. Upon review, we conclude the insurance policy number we have marked in the submitted documents must be withheld under section 552.136 of the Government Code.

In summary, if the lien information we have marked pertains to a living individual's financial obligation, the department must withhold it under section 552.101 of the Government Code. The department must withhold the Texas motor vehicle record information you have redacted in addition to the information we have marked if it pertains to living individuals under section 552.130 of the Government Code. The insurance policy number that we have marked must be withheld under section 552.136 of the Government Code. The remaining information must be released to the requestor.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/sdk

Ref: ID# 340716

Enc. Submitted documents

c: Requestor
(w/o enclosures)