



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

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

OR2009-17169

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#363095 (City of Fort Worth Public Information Request Nos. 5711, 5712, 5713, 5714, and 5715-09).

The City of Fort Worth (the "city") received five requests from the same requestor for the following: (1) information pertaining to the requestor's computer activity for a specified time frame; (2) the requestor's personnel files for a specified time frame; (3) the employment applications of five named individuals; (4) records pertaining to the Audit and Finance Advisory Committee; and (5) security camera video and requests for service pertaining to the requestor. You state that the city has released information to the requestor that is responsive to her first, fourth, and fifth requests and that the city is withdrawing its request for a ruling for those requests. You also state you have redacted certain Texas motor vehicle record information relating to individuals other than the requestor under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also claim that some of the submitted information is not subject to the Act. You also claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.116, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by an interested third party. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

¹We note that you have redacted employee home addresses, home telephone numbers, social security numbers, and family information pursuant to section 552.117 of the Government Code. *See* Gov't Code § 552.024 (governmental body may redact section 552.117 information without necessity of requesting decision from this office).

Initially, you assert that the submitted out-of-state driver's license number is not subject to the Act. The Act is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of one person. See Open Records Decision No. 635 at 4 (1995). In addition, section 552.001 states it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. See Gov't Code § 552.001(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

You generally assert that an out-of-state driver's license number is not maintained under a law or ordinance or in connection with the transaction of official business, therefore, it does not constitute public information for the purposes of section 552.002. We note the information at issue was collected as part of an application for employment with the city. Thus, having considered your arguments and reviewed the information at issue, we find that the submitted out-of-state driver's license number was collected and is maintained by the city in connection with the transaction of official city business. We therefore conclude that the submitted out-of-state driver's license is public information under section 552.002 that must be released unless it falls within an exception to public disclosure. See Gov't Code §§ 552.002, .021.

Next, we note, and you acknowledge that the city failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. Gov't Code § 552.301(b),(e). A governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information from disclosure. See *id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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 predecessor to section 552.302); see also Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that 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). Because the city's claim under section 552.101 in conjunction with common-law privacy can provide a compelling reason for non-disclosure under section 552.302, we will consider the applicability of this exception to the submitted information along with your timely 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." This section 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). 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. You seek to withhold an out-of-state driver's license number under common-law privacy. Upon review, we find that this information is not highly intimate or embarrassing and may not be withheld under section 552.101 in conjunction with common-law privacy.

We have also received arguments from an interested third party who indicates that the out-of-state driver's license number is confidential. However, the third party failed to point to any statutory confidentiality provision, nor are we aware of any, that would make the out of state driver's license confidential under section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold the submitted out-of-state driver's license number under section 552.101 of the Government Code.

You state that a portion of the submitted information is excepted from disclosure under section 552.116 of the Government Code. Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history

background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state, and provide documentation showing, that section 2-134(b) of article 4, division 3 of Chapter 2 of the city's Code of Ordinances authorizes the city's Internal Audit Department to perform certain duties and responsibilities including submitting an audit plan to the City Council for approval. You further inform us that section 2-134(b) authorizes the Internal Audit Department to conduct certain types of audits, including financial, compliance, contractor, electronic, and performance audits. You state that the submitted documents are audit programs for this year's petty cash fund that the Internal Audit Department is currently processing. You further state that these audits are in draft form and are part of the audit plan that is presented to the City Council. Based on your representations and our review of the information at issue, we conclude that information you have marked consists of audit working papers that the city may withhold under section 552.116 of the Government Code.

You assert that a portion of the remaining information is excepted from disclosure under section 552.136 of the Government Code. Section 552.136(b) provides that "[n]otwithstanding 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." The credit card number you have marked is generally confidential under section 552.136 of the Government Code. We note, however, that it appears the credit card number at issue belongs to the requestor. If so, then the requestor has a special right of access to her own credit card number, and such information may not be withheld from the requestor under section 552.136. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). If the requestor is not the individual to whom the information at issue pertains, then the city must withhold the marked credit card number under section 552.136 of the Government Code.

The city asserts that some of the remaining information is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 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). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). Therefore, unless the city receives consent for their release, the city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

In summary, the city may withhold the information you have marked under section 552.116 of the Government Code. The city must withhold the credit card number you have marked under section 552.136 of the Government Code, unless the requestor has a right of access to this information pursuant to section 552.023 of the Government Code. The city must withhold the e-mail addresses you have marked under section 552.137 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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 363095

Enc. Submitted documents

cc: Requestor
(w/o enclosures)