



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2010.

Ms. Luz E. Sandoval Walker
Assistant City Attorney
The City of El Paso
810 Overland
El Paso, Texas 79901

OR2010-10785

Dear Ms. Sandoval Walker:

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# 387318.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). The department requested a decision from this office on May 13, 2010. In the letter dated May 13, the department states it received the request for information on April 28, 2010. However, you also provide a signed statement that the department received the request on April 29, 2010. Because of this conflicting information, we are unable to determine whether the department requested a ruling from this office within ten business days of receiving the request for information. *See id.* § 552.301(b). We therefore find that the department has failed to establish that it complied with the procedural requirements of section 552.301 in requesting a ruling from this office. *See id.*

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act 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. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (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); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 at 2 (1977). Section 552.108 is discretionary in nature, and serves only to protect a governmental body's interests; as such, it may be waived. See Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the department may not withhold the submitted information pursuant to section 552.108 of the Government Code. However, because sections 552.101 and 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the applicability of these sections to the submitted information.¹

Section 552.101 of the Government Code excepts from public 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 if it (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 established. *Id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. See Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). In this instance, one of the submitted documents

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

contains private financial information. If the marked information relates to a personal financial obligation of a living individual, it must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that privacy is a personal right that lapses at death, and thus common-law privacy is not applicable to information that relates only to 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.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Furthermore, common-law privacy protects the interests of individuals, not those of financial institutions and other business entities.² Thus, if the marked information relates only to the financial interests of a deceased individual or a business entity, the information is not protected by common-law privacy and may not be withheld on that basis under section 552.101.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, registration, or a personal identification document issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). We note that the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas motor vehicle record information that pertains to solely to a deceased individual may not be withheld under section 552.130. *See* 589 S.W.2d 489, 491. We have marked Texas license plate information and the vehicle identification number pertaining to a vehicle driven by an individual who is now deceased. If this information pertains to a vehicle owned by a living person, it must be withheld under section 552.130; however, this information may not be withheld under section 552.130 if it only pertains to a deceased individual. The department must also withhold the remaining Texas motor vehicle record information we have marked,

² *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy).

as well as the additional Texas motor vehicle record information we have indicated in the submitted videos, under section 552.130.³

We note that you have marked a social security number in the submitted report. The social security number of a living person is excepted from disclosure pursuant to section 552.147 of the Government Code. Gov't Code § 552.147(b). Although section 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, this section does not apply to the social security number of a deceased individual. *Id.* Therefore, the department may not withhold the social security number you have marked belonging to the deceased individual under section 552.147 of the Government Code.

In summary, if the marked information relates to a personal financial obligation of a living individual, it must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked Texas license plate information and the vehicle identification number pertaining to a vehicle driven by an individual who is now deceased. If this information pertains to a vehicle owned by a living person, it must be withheld under section 552.130; however, this information may not be withheld under section 552.130 if it pertains to a deceased individual. The department must also withhold the remaining Texas motor vehicle record information we have marked, as well as the additional Texas motor vehicle record information we have indicated in the submitted videos, under section 552.130. The remaining information must be released.⁴

³ We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 without the necessity of requesting an attorney general decision.

⁴ We note that the information to be released contains information that would be confidential with regard to the general public, but to which the requestor may have a right of access under section 552.023 of the Government Code. 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). Should the department receive another request for this information from someone other than the requestor, the department should again seek a decision from this office.

Ms. Luz E. Sandoval Walker - Page 5

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/em

Ref: ID# 387318

Enc. Submitted documents

cc: Requestor
(w/o enclosures)