



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2010

Ms. Jenny Gravley
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2010-10862

Dear Ms. Gravley:

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# 387371.

The City of Southlake (the "city"), which you represent, received a request for certain employment records pertaining to a named city employee. You state the city has provided some of the requested information to the requestor with redactions agreed upon by the requestor. You claim portions of the submitted employment records are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has specifically excluded from her request all social security numbers, addresses, telephone numbers, and e-mail addresses. Thus, any such information is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we must address the city's 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) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). The city states it received the request for information on April 30, 2010. Accordingly, the city's ten-business-day deadline was May 14, 2010. Although the city's request for a ruling and claims under sections 552.101 and 552.117 of the Government Code

were timely submitted to this office on May 13, 2010, the city did not raise its claim under section 552.130 of the Government Code until May 20, 2010. Consequently, we find the city failed to comply with the procedural requirements of section 552.301 with respect to its claim under section 552.130 of the Government Code.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.130 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception, along with your timely-raised claims under sections 552.101 and 552.117 of the Government Code.

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 (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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision No. 545 (1990). Upon review, we agree most of the information you marked constitutes personal financial information in which there is no legitimate public interest. Thus, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, this office has also found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Although you contend the salary information you marked in the submitted employment records is protected by common-law privacy, we find there is a legitimate public interest in the information as it pertains to the employee's employment qualifications and background. Thus, you have failed to demonstrate the applicability of common-law privacy to the salary information in the submitted employment records. You have also failed to demonstrate how the bank name and locations you seek to withhold are protected by common-law privacy. Thus, the salary and bank information at issue, which we

have marked, may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you have claimed no other exceptions to disclosure for this information, it must be released.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). As previously noted, the requestor has specifically excluded social security numbers, addresses, and telephone numbers from her request. The city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

You indicate the employee whose information is at issue timely chose to not allow public access to his personal information. Accordingly, the city must withhold most of the family information you have marked in the remaining information pursuant to section 552.117(a)(1) of the Government Code. You have failed to demonstrate, however, how the remaining information you seek to withhold consists of the family member information of a current or former city official or employee. Thus, the remaining information at issue, which we have marked, may not be withheld under section 552.117(a)(1) of the Government Code. As you have claimed no other exceptions to disclosure for this information, it must be released.

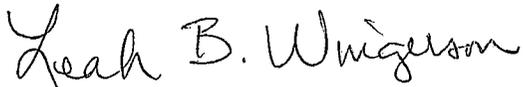
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we agree some of the information you seek to withhold consists of Texas motor vehicle record information subject to section 552.130. Thus, the city must withhold the marked Texas driver's license expiration date and class under section 552.130 of the Government Code. You have failed, however, to demonstrate the applicability of section 552.130 to the remaining information at issue, which consists of the general status of the named individual's driver's license. Consequently, the remaining information at issue, which we have marked, may not be withheld under section 552.130 of the Government Code. As you have claimed no other exceptions to disclosure for this information, it must be released.

In summary, with the exception of the information marked for release, the city must withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.117(a)(1) of the Government Code, and section 552.130 of the Government Code. 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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 387371

Enc. Submitted documents

c: Requestor
(w/o enclosures)