



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 9, 2010

Mr. Charles E. Zech  
Denton, Navarro, Rocha & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2010-12013

Dear Mr. Zech:

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# 389679.

The City of Cibolo (the "city"), which you represent, received a request for a specified police report. You state you have released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. *Id.* §552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide a compelling reason why the information should not be disclosed. *See Simmons v. Kuzmich*, 166 S.W.3d 342 (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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). You claim the information at issue is excepted from disclosure under section 552.108 of the Government Code. However, because the city failed to comply with the requirements of the Act, the city waived its claim under section 552.108, which is a discretionary exception to disclosure. *See*

Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, this information may not be withheld under section 552.108 of the Government Code. However, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons for non-disclosure, we will consider your arguments under these exceptions.

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. Section 552.101 encompasses the doctrine of common-law privacy, which excepts from public disclosure private information about an individual if the information (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 or 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the submitted information reflects that the requestor knows the identity of the individual involved as well as the nature of the incident. Thus, withholding only the identity of the individual involved or certain details of the incident from the requestor would not preserve the individual's common-law right to privacy. Therefore, to protect the privacy of the individual to whom the information pertains, the city must generally withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor is a foster parent of the minor child to whom the private information pertains. As such, the requestor has a special right of access to private information concerning herself under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or her authorized representative requests information concerning individual). Therefore, the city may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

You state you have redacted Texas driver's license numbers under section 552.130 of the Government Code pursuant to Open Record Decision No. 684 (2009).<sup>1</sup> Section 552.130

---

<sup>1</sup>This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

provides that 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). However, we note one of the Texas driver's license numbers at issue belongs to the requestor's spouse. As such, the requestor has a right of access to his spouse's Texas driver's license number pursuant to section 552.023, if he is acting as her authorized representative. *See id.* § 552.023 (person or person's authorized representative has a special right of access to information that relates to a person that are protected from public disclosure by laws intended to protect that person's privacy interest). Thus, if the requestor is seeking the information as the authorized representative of his spouse, then he has a right of access to her Texas driver's license number, and the city may not withhold this information under section 552.130. If the requestor is not seeking the information as his spouse's authorized representative, then the city must withhold her Texas driver's license number under section 552.130. However, the city must withhold the remaining driver's license number not belonging to the requestor's spouse, which you have redacted, under section 552.130 of the Government Code. As no further exceptions to disclosure are raised, the remaining information must be released to this requestor.<sup>2</sup>

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](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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

---

<sup>2</sup>We note that because the requestor has a special right of access to information that would otherwise be confidential in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor. *See* Gov't Code § 552.023.

Ref: ID# 389679

Enc. Submitted documents

c: Requestor  
(w/o enclosures)