



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 2, 2010

Ms. Yvette Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2010-13349

Dear Ms. Aguilar:

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# 395369.

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified incident. You indicate you will withhold information you marked under section 552.130 of the Government Code pursuant to the previous determination in Open Records Decision No. 684 (2009). *See* Open Records Decision No. 684 (2009) (previous determination authorizing governmental bodies to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without necessity of requesting attorney general opinion). You claim the remaining information is excepted under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.117, 552.1175, 552.136, 552.137, and 552.139 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow

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<sup>1</sup>You also raise section 552.147 of the Government Code; however, the submitted information does not contain any social security numbers. *See* Gov't Code § 552.147(b) (governmental body may redact living person's social security number from public release without necessity of requesting decision from this office under the Act).

in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld. Gov't Code § 552.301(e)(1)(A). The department received the request for information on July 13, 2010. Although the department marked some documents to be withheld under section 552.108 of the Government Code, it has not submitted written comments explaining why any of the stated exceptions apply. Thus, the department failed to comply with the procedural requirements mandated by section 552.301(e)(1)(A).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* Open Records Decision No. 630 (1994).

You assert the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.117, 552.1175, 552.136, 552.137, and 552.139 of the Government Code. Sections 552.103, 552.107, 552.108, and 552.111 of the Government Code are discretionary in nature; they serve only to protect a governmental body's interests and may be waived. As such, they do not generally constitute compelling reasons to withhold information. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex.App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10 (2002) (claim of attorney work-product privilege under section 552.111 or Texas Rule of Civil Procedure 192.5 does not provide compelling reason for purposes of section 552.302 if it does not implicate third party rights), 676 at 10-11 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason for purposes of section 552.302 if it does not implicate third party rights), 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Accordingly, the department may not withhold the requested information under section 552.103, 552.107, 552.108, or 552.111. Sections 552.101, 552.102, 552.117, 552.1175, 552.136, 552.137, and 552.139 of the Government Code, however, can provide compelling reasons to overcome this presumption; therefore, we will consider whether these sections require the department to withhold 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." You do not cite to any specific law, and we are not aware of any, that makes any portion of the submitted information confidential under section 552.101. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating information shall not be released to public). We, therefore, conclude the department may not withhold any portion of the submitted information under section 552.101 of the Government Code.

Section 552.102(a) of the Government Code excepts from required public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This exception applies when the release of information would result in a violation of the common-law right to privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). The common-law right to privacy protects information that (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) is of no legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Because the department has not shown the submitted information is private information contained in the personnel file of an employee of the City of San Antonio, we conclude the department may not withhold any portion of the submitted information under section 552.102 of the Government Code.

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). You do not inform us the submitted information contains the home address and telephone number, social security number, or family member information of a current or former official or employee of the City of Corpus Christi; therefore, we find you have not established that any of the submitted information is excepted under section 552.117.

Section 552.1175 of the Government Code exempts from public disclosure the home addresses and telephone numbers, social security numbers, and family member information of specified categories of governmental body employees or officials. *Id.* § 552.1175(a)-(b). The submitted information does not contain the home addresses and telephone numbers, social security numbers, or family member information of any persons falling within the specified categories of governmental body employees listed in section 552.1175; therefore, the department may not withhold the submitted information section 552.1175.

Section 552.136(b) of the Government Code 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.” *Id.* § 552.136(b). The submitted information does not contain a credit card, debit card, charge card, or access device number; therefore, the department may not withhold the submitted information under section 552.136.

Section 552.137 of the Government Code exempts 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 id.* § 552.137(a)-(c). The submitted information does not contain an e-mail address; therefore, the department may not withhold the submitted information under section 552.137.

Section 552.139 of the Government Code provides the following:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security, to restricted information under Section 2059.055, or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

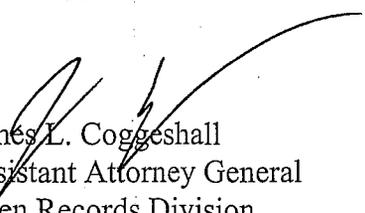
(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body’s or contractor’s electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use.

*Id.* § 552.139. The submitted information does not relate to computer network security, restricted information under section 2059.055 of the Government Code, or to the design, operation, or defense of a computer network for purposes of section 552.139(a). Furthermore, you have not demonstrated the information consists of a computer network vulnerability assessment or report, as contemplated by section 552.139(b). Therefore, the department may not withhold the submitted information under section 552.139. Accordingly, with the exception of the Texas driver's license numbers to be withheld pursuant to the previous determination in Open Records Decision No. 684 (2009), the department must release the submitted information 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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tp

Ref: ID# 395369

Enc. Submitted documents

c Requestor  
(w/o enclosures)