



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 2, 2010

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2010-13389

Dear Mr. Phillips:

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# 392450 (City of Fort Worth PIR # 2196-09).

The City of Fort Worth (the "city") received a request for an electronic copy of all e-mail or MDC messages from a named officer during a specified time period. You state you have released some information to the requestor. You also state you have redacted certain Texas motor vehicle record information 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 state you have redacted social security numbers under section 552.147(b) of the Government Code.<sup>1</sup> You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.130, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also received and considered comments from the requestor. *See*

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<sup>1</sup>Section 552.147(b) 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. Gov't Code § 552.147(b).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that in comments to this office, the requestor informs us his request does not encompass "MDC returns from the Texas Law Enforcement Telecommunications System ("TLETS")" and only seeks communications sent *from* the named individual, not communications sent to her. Accordingly, the submitted pages of TLETS returns, which we have marked, are not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release non-responsive information in response to this request.<sup>3</sup>

Next, the requestor notes, you acknowledge, and we agree that the city did not comply with its ten or fifteen business-day deadlines under section 552.301 of the Government Code in requesting this decision. *See id.* § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *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 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when 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 claims under section 552.101 of the Government Code can provide compelling reasons for non-disclosure under section 552.302, we will address your arguments under that exception.

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 information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

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<sup>3</sup>As we are able to make this determination, we do not address your arguments under sections 552.130 or 552.151 of the Government Code.

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Portions of the responsive information you have marked pertain to a juvenile engaged in delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of Fam. Code § 58.007). You state that none of the exceptions in section 58.007 apply to this information; therefore, the city must withhold the portions of information you have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 also encompasses 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 type 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See Open Records Decision No. 455 (1987)* (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree some of the information you marked is highly intimate or embarrassing and not of legitimate public interest. However, we find some of the information you marked pertains to an individual who is not identified. This information does not implicate any individual's privacy interest. Moreover, you have not explained, nor can we discern, how any of the remaining information you marked is highly intimate or embarrassing. Accordingly, this information may not be withheld under common-law privacy. Therefore, the city must withhold only the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, we note a portion of the remaining information may be subject to section 552.117 of the Government Code.<sup>4</sup> Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

officer complies with section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We have marked a portion of the remaining responsive information that may be subject to section 552.117(a)(2). However, we are unable to determine from the information provided whether the individual to whom the information pertains is a currently licensed peace officer. Thus, we must rule conditionally. To the extent this individual is a currently licensed peace officer as defined by article 2.12, the city must withhold the information we have marked under section 552.117(a)(2). To the extent the individual at issue is not a currently licensed peace officer, the city may not withhold the information at issue under section 552.117(a)(2).

If the individual at issue is not a currently licensed peace officer, section 552.117(a)(1) may apply to the information at issue. Section 552.117(a)(1) of the Government Code excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). Whether a particular piece of 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)*. Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Accordingly, to the extent the employee to whom this information pertains is not a currently licensed police officer and timely elected confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1).

In summary, the city must withhold the portions of information it has marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold the portions of information we have marked under section 552.101 in conjunction with common-law privacy. If the information we have marked pertains to a currently licensed police officer, then the city must withhold that information under section 552.117(a)(2) of the Government Code. If the information we have marked pertains to an individual who is not a currently licensed police officer but who elected confidentiality under section 552.024 of the Government Code, then the city must withhold that information under section 552.117(a)(1). 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](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 McGuire  
Assistant Attorney General  
Open Records Division

JM/dls

Ref: ID# 392450

Enc. Submitted documents

c: Requestor  
(w/o enclosures)