ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2010

Ms. Cherl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2010-15427

Dear Ms. Byles:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. This office also received a request from the requestor for review of the redaction of certain information subject to the Act. We will consider all the issues presented in this single ruling assigned ID# 396226 (PIR No. W002467).

The City of Fort Worth (the "city") received a request for a named city employee's personnel file, exclusive of criminal, health, insurance, banking and tax records. You inform us that the city has released most of the requested records, subject to redactions pursuant to sections 552.024(c) and 552.147 of the Government Code.[1] We note that the city also redacted the employee's personal e-mail address pursuant to the previous determination issued under section 552.137 of the Government Code in Open Records Decision No. 684 (2009).[2] You contend that some of the remaining requested information is not subject to the Act. You also claim that some of the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and

[1]We note that 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.

[2]This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including the e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

reviewed the information you submitted. We also have considered the comments we received from the requestor.[3]

Initially, we consider the requestor's appeal of the city's redactions under section 552.024 of the Government Code. *See* Gov't Code § 552.024(c-1).[4] Section 552.117(a)(1) of the Government Code excepts from 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 timely requests that this information be kept confidential under section 552.024. *See* Gov't Code §§ 552.024(a)-(b), .117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential.

Section 552.024(c) authorizes a governmental body to redact information protected by section 552.117(a)(1) without the necessity of requesting a decision under the Act if the current or former employee to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). You state, and have provided documentation demonstrating, that prior to the city's receipt of the instant request for information, the named employee requested confidentiality for his home address and telephone number, social security number, and information that reveals whether he has family members. You have provided this office with unredacted and redacted copies of the requested records from which the city redacted information pursuant to section 552.024(c). Having reviewed those records, we conclude that the information the city redacted is excepted from disclosure under section 552.117(a)(1) of the Government Code and thus was properly withheld pursuant to section 552.024(c).

Next, we address your arguments against disclosure of the remaining information at issue. You contend that some of the information is not subject to the Act. The Act is applicable to "public information," which is defined as consisting of

> information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

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[3]*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

[4]Section 552.024(c)(1) provides that a requestor is entitled to ask the attorney general for a decision if a governmental body redacts or withholds information under section 552.024(c) without requesting the attorney's general decision about whether information may be redacted or withheld.

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). You claim that an out-of-state driver's license number pertaining to the named employee "is not considered public information because it is not related to 'official city business' as defined in section 552.002(a)[.]" You acknowledge, however, that the driver's license number is contained in an executive auto allowance request for the named employee. We find that, having been included in the executive auto allowance request, the driver's license number was collected and is maintained by the city in connection with the transaction of official business. Thus, the driver's license number is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002, .006, .021.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

We have marked personal financial information relating to the named employee that is highly intimate or embarrassing and not a matter of legitimate public interest. The city must withhold the marked information under section 552.101 of the Government Code in

conjunction with common-law privacy. We find that the named employee's out-of-state driver's license number, which you also seek to withhold on this basis, is not intimate or embarrassing and a matter of no legitimate public concern. We therefore conclude that the driver's license number is not protected by common-law privacy and may not be withheld on that basis under section 552.101.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. Section 2721 of title 18 of the United States Code provides in part:

> (a) A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:
>
> > (1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section[.]

18 U.S.C. § 2721(a)(1). Section 2725 defines motor vehicle record as "any record that pertains to a motor vehicle operator's permit, . . . title, . . . registration, or identification card issued by a department of motor vehicles. *See id.* § 2725(1). You appear to acknowledge that section 2721(a) is only applicable to state departments of motor vehicles.[5] *See id.* § 2721(a). In any event, you have not demonstrated that the employee's out-of-state driver's license number constitutes personal information obtained in connection with a motor vehicle record by a state department of motor vehicles. We therefore conclude that the driver's license number may not be withheld under section 552.101 of the Government Code in conjunction with section 2721 of title 18 of the United States Code.

In summary: (1) the information that was redacted from the records that were released is excepted from disclosure under section 552.117(a)(1) of the Government Code and thus was properly withheld pursuant to section 552.024(c) of the Government Code; and (2) the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The rest of the information at issue 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.

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[5]You also acknowledge that an out-of-state driver's license number is not protected by section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1).

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,

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 396226

Enc: Submitted information

c: Requestor
(w/o enclosures)

GAIL K TIDWELL
11712 WIND CREEK CT
ALEDO TX 76008

Filed in The District Court
of Travis County, Texas

LM JUL 30 2013

At 8:34 M.
Amalia Rodriguez-Mendoza, Clerk

Cause No. D-1-GV-10-001771

CITY OF FORT WORTH, *Plaintiff,*	§ § §	IN THE DISTRICT COURT
v.	§ § §	126th JUDICIAL DISTRICT
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, *Defendant.*	§ § §	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Texas Government Code ch. 552, in which the City of Fort Worth, sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff, City of Fort Worth (City), and Defendant, Greg Abbott, Attorney General of Texas (Attorney General), arising out of this lawsuit have been resolved, and the parties agree to the entry and filing of an agreed final judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that in compliance with section 552.325(c), the Attorney General sent a letter by certified mail and electronic mail to the requestor, Ms. Gail Tidwell, on July 1, 2013, providing reasonable notice of this setting (*see* attached notice). The requestor was informed of the parties' agreement that the City must withhold the information at issue. The requestor was also informed of her right to intervene in the suit to contest the City's right to withhold the information. The requestor has not filed a motion to intervene or appeared today.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The information at issue, an employee's out-of-state driver's license number listed on the form, bate-stamped CFW-001, is excepted from disclosure pursuant to Texas Government Code section 552.130(a).

2. The City must withhold from the requestor the information described in Paragraph 1 of this order, and release all of the remaining information consistent with letter ruling OR2010-15427.

3. All court cost and attorney fees are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between the City and the Attorney General and is a final judgment.

SIGNED the 30 day of July, 2013.

PRESIDING JUDGE

AGREED:

Michelle M. Kretz

MICHELLE M. KRETZ
State Bar No. 24070082
Assistant City Attorney
THEODORE P. GORSKI, JR.
State Bar No. 08221000
Assistant City Attorney
City Attorney's Office of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102
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ATTORNEYS FOR PLAINTIFF
CITY OF FORT WORTH

Rosalind L. Hunt

ROSALIND L. HUNT
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Assistant Attorney General
Open Records Litigation
Administrative Law Division
Office of the Attorney General of Texas
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Austin, Texas 78711-2548
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Facsimile: (512) 457-4677

ATTORNEY FOR DEFENDANT
ATTORNEY GENERAL OF TEXAS

ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 1, 2013

Ms. Gail Tidwell
11712 Wind Creek Court
Aledo Texas, 76008

CM/RRR #7008 0500 0001 5065 7181
via email: MizTidwell@aol.com

Re: Cause No. D-1-GV-10-001771, *City of Fort Worth v. Greg Abbott, Attorney General of Texas*, In the 126th Judicial District Court of Travis County, Texas

Dear Ms. Tidwell,

This letter is regarding your request for information from the City of Fort Worth. The City of Fort Worth and the Attorney General have reached a settlement in this lawsuit and a portion of the information responsive to your request must be withheld under Texas Government Code section 552.130(a) (*see* enclosed settlement documents). The settlement documents state that an out-of-state driver's license number must be withheld by the City pursuant to Texas Government Code section 552.130(a).

The Attorney General is required to attempt to notify you of this settlement and, as the requestor, you have the right to intervene in this suit to contest withholding this information (*see* enclosed Tex. Gov't Code § 552.325(c)). And the court is required to give you a reasonable period of time to intervene after this notice is given before entering final judgment in the lawsuit.

Please be advised that on July 30, 2013, on the 8:30 am, Uncontested Docket, Travis County Courthouse, 1000 Guadalupe, Austin, Texas, the agreed judgment will be presented to the court.

If you intend to intervene, you must do so before July 29, 2013, and it would be greatly appreciated if you would notify me in writing beforehand. If you have any questions about the lawsuit or the settlement, please contact either me or Plaintiff's attorney.

Sincerely,

Rosalind L. Hunt
Assistant Attorney General
Open Records Litigation
Administrative Law Division
Office of the Attorney General
Telephone: (512) 475-4166
Facsimile: (512) 457-4677

ATTORNEY FOR DEFENDANT
ATTORNEY GENERAL OF TEXAS

encls. Settlement Agreement, Agreed Final Judgment, and Tex. Gov't Code § 552.325(c).

cc: Michelle M. Kretz via email: Michelle.Kretz@FortWorthTexas.gov
Theodore P. Gorski, Jr. via email: Ted.Gorski@FortWorthTexas.gov

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ms. Gail Tidwell
11712 Wind Creek Court
Aledo Texas, 76008
FtW 17: Req Ltr noticing settlement

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery 7-5-13

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7008 0500 0001 5065 7181

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540