



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2010

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

OR2010-15820

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# 397378.

The City of Southlake (the "city"), which you represent, received a request for information pertaining to a named individual, including the termination memo; the F-5 form; internal affairs investigations, complaints, and conclusions; and a specified investigation. You state the city will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-11691 (2010). In that ruling, we determined the city's police department may withhold portions of the information at issue under section 552.108(a)(2) of the Government Code. You state there has been no change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the city may rely on Open Records Letter No. 2010-11691 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).¹

¹As our ruling is dispositive, we need not address your argument against disclosure of the information at issue.

Next, we note, and you acknowledge, the city has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision with respect to a portion of the submitted information. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *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, 381-82 (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 governmental body may demonstrate a compelling reason to withhold information by a showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the untimely submitted information. We will address your remaining arguments for the information not previously ruled upon.

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 information other statutes make confidential, such as section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”). Section 1701.454 provides as follows:

- (a) A report or statement submitted to the [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

Occ. Code § 1701.454. The submitted information includes an F-5 Report of Separation of License Holder form. In this instance, the named officer did not resign due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the submitted F-5 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate

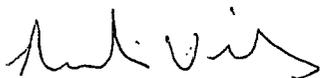
and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found 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) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find the types of information we have noted within the submitted audio recording are highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the types of information we have noted under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city may rely on Open Records Letter No. 2010-11691 as a previous determination and withhold the identical information in accordance with that ruling. The city must withhold the submitted F-5 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The city must withhold the types of information we have noted under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/dls

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Enc. Submitted documents

c: Requestor
(w/o enclosures)