



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2010

Ms. Molly Shortall  
Assistant City Attorney  
City of Arlington  
P.O. Box 90231  
Arlington, Texas 76004-3231

OR2010-18003

Dear Ms. Shortall:

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# 401545.

The City of Arlington (the "city") received a request for personnel records pertaining to a named individual. You state the city has released some of the responsive information. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed 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." Gov't Code § 552.101. This section encompasses information other statutes make confidential. Section 730.004 of the Transportation Code provides that "an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. "Personal information" includes a person's name and address but not the zip code. *Id.* § 730.003(6). The Department of Public Safety (the "DPS") is an "agency" for purposes of chapter 730. *See id.* § 730.003(1) ("agency" is state agency that compiles or maintains motor vehicle records). We understand a portion of the submitted information was obtained by the city from the DPS for use by the city in carrying out its governmental functions. *See id.* § 730.007(a)(2)(A)(I) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of

personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, we find that the name and address of the individual obtained from the DPS must be withheld. Accordingly, we have marked the information that must be withheld from disclosure under sections 730.004 and 730.013 of the Transportation Code in conjunction with section 552.101 of the Government Code. We note that the remaining information either does not consist of "personal information" for the purposes of chapter 730 or is not information obtained from the DPS, and it may not be withheld under section 552.101 based on sections 730.004 and 730.013.

Section 552.101 of the Government Code also encompasses the common-law right of privacy. The doctrine of common-law privacy protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we agree that portions of the remaining information are highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that the remaining information is not highly intimate or embarrassing and is of legitimate public interest. Thus, the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

We note that portions of the remaining information may be subject to section 552.117(a)(1) of the Government Code.<sup>1</sup> Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. Gov't Code § 552.117(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. You do not indicate whether the employee whose information is at issue requested confidentiality pursuant to section 552.024. Accordingly, if the employee timely elected confidentiality, then the city must withhold the information we have marked under section 552.117(a)(1). If the employee did not timely elect confidentiality, the city may not withhold any of the marked information under section 552.117(a)(1).

We note that the remaining information contains information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, registration, or a personal identification document issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). We have marked the Texas motor vehicle record information that the city must withhold under section 552.130 of the Government Code.<sup>2</sup>

In summary, the city must withhold the information we have marked under 1) section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code; 2) section 552.101 of the Government Code in conjunction with common-law privacy; and 3) section 552.130 of the Government Code. If the employee timely elected confidentiality under section 552.024 of the Government Code, then the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The remaining information must be released.<sup>3</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.

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<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>Regardless of the applicability of section 552.117, section 552.147(b) of the Government Code 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.

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,

  
Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/tf

Ref: ID# 401545

Enc. Submitted documents

c: Requestor  
(w/o enclosures)