



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2011

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-05731

Dear Ms. Sangsvang:

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# 415555 (PIR No. W006541).

The City of Fort Worth (the "city") received a request for all investigative records related to the death of a named individual. You indicate you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim some of the submitted information was obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and is, therefore, not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and, therefore, are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that

¹Section 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.

information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. See ORD 513. Thus, to the extent the information you have marked is held by the city as an agent of the grand jury, we agree it consists of records of the judiciary not subject to disclosure under the Act. To the extent the information you have marked does not consist of records of the judiciary, we will address your arguments against disclosure of this information.

Next, we note the submitted information consists of a completed investigation, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code for the submitted information, this section is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 69, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the information at issue under this exception. However, you also raise sections 552.101, 552.117, and 552.130 of the Government Code for the submitted information. In addition, some of the submitted information is subject to section 552.136 of the Government Code.² Because sections 552.101, 552.117, 552.130, and 552.136 are other laws for section 552.022(a)(1) purposes, we will consider the applicability of these exceptions to the submitted information.

We note the submitted information contains Texas Peace Officer's Crash Reports ("accident reports"). 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. Section 552.101 encompasses information that other statutes make confidential. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. See Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* The submitted information includes accident reports that were completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). In this instance, the requestor has not provided the city with two of the three requisite pieces of information. Therefore, the city must withhold the CR-3 accident reports pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. The submitted information includes photographs of the decedent's body taken during an autopsy. You do not indicate either of the statutory exceptions to confidentiality is applicable in this instance. Thus, we conclude the city must withhold the autopsy photographs you have labeled DSC_6422 through DSC_6424, DSC_6447, and DSC_6451 through DSC_6459 under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses information protected by chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.218 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 860,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See Open Records Decision No. 649 (1996)*. You state the city is part of an emergency communication district that is subject to section 772.218 of the Health and Safety Code. Thus, we conclude, to the extent the telephone numbers and address you have marked consist of the originating telephone

numbers and address of 9-1-1 callers that were supplied by a 9-1-1 service provider, the city must withhold the marked telephone numbers and address under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. However, to the extent the telephone numbers at issue are not the originating telephone numbers provided by a 9-1-1 service supplier, the city may not withhold them under section 552.101 in conjunction with section 772.218.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision No. 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 find most of the information you have marked, in addition to the information we have marked, is highly intimate or embarrassing and not of legitimate public interest. However, some of the information you have marked is not highly intimate or embarrassing or is of legitimate public interest. This information, which we have indicated, may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the remaining information you have marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

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 requests that this information be kept confidential under section 552.024 of the Government Code. See Gov't Code §§ 552.117, .024. 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. You state some of the remaining information, which you have marked, consists of personal information of a city employee who elected to withhold his information prior to the receipt of the request. However, section 552.117 applies only to records that a governmental body is holding in an employment capacity. The submitted information consists of law enforcement records maintained by the city's police department and is not held by the city as an employer. Therefore, we find section 552.117(a) of the Government Code does not

apply in this situation, and the city may not withhold any portion of the information you have marked on that basis.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). You 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 Open Records Decision No. 673 at 7-8 (2001) (previous determination). In addition, you state some of the remaining information, which you have marked, is beyond the scope of the previous determinations but is also excepted under section 552.130 of the Government Code. However, section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Some of the information you have redacted relates to a deceased individual. Accordingly, to the extent a living individual has an interest in this redacted information, it must be withheld under section 552.130. However, if any of this redacted information pertains solely to a deceased individual, it may not be withheld under section 552.130. The city must withhold the remaining information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], 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.” Gov't Code § 552.136(b); see *id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are “access device” numbers for purposes of section 552.136. We note you have redacted insurance policy numbers, which you are authorized to redact under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).³ We have marked an additional insurance policy number in the remaining information. One of the insurance policy numbers you have redacted and the insurance policy number we have marked relates to a deceased individual. However, section 552.136 protects the privacy interests of individuals, and the right to privacy lapses at death. See *Moore*, 589 S.W.2d at 491. Accordingly, to the extent a living individual has an interest in the information at issue, it must be withheld under section 552.136. However, if any of information at issue pertains solely to a deceased individual, it may not be withheld under section 552.136. The city must withhold the remaining information you have redacted under section 552.136 of the Government Code.

³Open Records Decision No. 684 is a previous determination issued by this office to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent the submitted information you have marked is held by the city as an agent of the grand jury, it consists of records of the judiciary not subject to disclosure under the Act. The city must withhold the submitted accident reports pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The city must also withhold the autopsy photographs you have labeled DSC_6422 through DSC_6424, DSC_6447, and DSC_6451 through DSC_6459 under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. To the extent the telephone numbers you have marked consist of the originating telephone numbers of 9-1-1 callers that were supplied by a 9-1-1 service provider, the city must withhold the marked telephone numbers under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. With the exception of the information we have indicated may not be withheld, the city must withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent a living person has an interest in the Texas motor vehicle record information you have redacted, it must be withheld under section 552.130 of the Government Code. The city must also withhold the remaining information marked under section 552.130 of the Government Code. To the extent a living individual has an interest in the insurance policy numbers you have redacted and we have marked, the city must withhold them under section 552.136 of the Government Code. The city must withhold the remaining information you have redacted under section 552.136 of the Government Code. The remaining information must be released to the requestor, but any information that is protected by copyright may only be released in accordance with copyright law.

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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett".

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 415555

Enc. Submitted documents

c: Requestor
(w/o enclosures)