



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2011

Ms. Susan Camp-Lee  
Sheets & Crossfield, P.C.  
For City of Elgin  
309 East Main Street  
Round Rock, Texas 78664

OR2011-07618

Dear Ms. Camp-Lee:

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# 419037.

The City of Elgin (the "city"), which you represent, received a request for a named officer's employment history, including his positions, dates of employment, and reason for leaving. You state the city has released some of the requested information to the requestor. In releasing this information, you state the city has redacted information under section 552.117(a)(2) in accordance with Open Records Decision No. 670 (2001).<sup>1</sup> You also state the city has redacted Texas driver's license numbers under section 552.130 of the Government Code and bank account numbers and credit card numbers under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You also state you have redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>3</sup> You claim some of the submitted information is excepted from

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<sup>1</sup>Open Records Decision No. 670 allows a governmental body to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision under section 552.301. ORD 670 at 6.

<sup>2</sup>This office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code and bank account numbers and credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

<sup>3</sup>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.

disclosure under sections 552.101, 552.119, 552.130, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, the city failed to request a ruling within the statutory time periods prescribed by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *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, 381-82 (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). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because sections 552.101, 552.119, 552.130, and 552.140 of the Government Code can provide compelling reasons to withhold information, we will consider their applicability to 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. Section 552.101 encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Upon review, we find that the information we have marked consists of CHRI for the purposes of chapter 411. Accordingly, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, you have failed to demonstrate how any portion of the remaining information consists of CHRI for the purposes of chapter 411. Accordingly, the city may not withhold any of this information under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of 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). This office has found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983).

For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989). Some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public; therefore, the city must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

You assert that the submitted information contains sheriff's department photographs which should be withheld from disclosure under section 552.119 of the Government Code, which provides as follows:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. Upon review, we find that the city has failed to demonstrate that release of the photographs would endanger the officer's life or physical safety. Accordingly, the photographs at issue may not be withheld under section 552.119 of the Government Code.

Next, you raise section 552.130 of the Government Code for a portion of the submitted information. Section 552.130 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. *Id.* § 552.130(a)(1), (2). Accordingly, the city must withhold the Texas motor vehicle record information you have marked in yellow under section 552.130 of the Government Code.

Section 552.140 of the Government Code provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may be disclosed only in accordance with section 552.140

or a court order. *See id.* § 552.140(a), (b). You state the submitted DD-214 form was received by the city after September 1, 2003. Therefore, the city must withhold this form in its entirety under section 552.140.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The city must withhold the submitted DD-214 form in its entirety under section 552.140 of the Government Code. The remaining information must be released to the requestor.

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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 419037

Enc. Submitted documents

c: Requestor  
(w/o enclosures)