



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2011

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-09318

Dear Ms. McClellan:

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# 422476 (DPD # 2011-3252 and KXAS OFFCOMP-041411-042811).

The Dallas Police Department (the "department") received a request for a database of all collisions in the last five years involving department personnel due to use of in-car computer systems or other electronic communications devices. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.147 of the Government Code.¹ We have also received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹ You have marked portions of the submitted information under section 552.102. Accordingly, we understand you to raise that exception.

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). You state the department received the request at issue on April 14, 2011. Accordingly, the ten-business day deadline fell on April 28, 2011. While you raised sections 552.101, 552.117, 552.130, 552.136, and 552.147 within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.102 until after that deadline had passed. Consequently, we find the department failed to comply with section 552.301 of the Government Code with respect to its claim under section 552.102.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists 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). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.102 can provide a compelling reason to withhold information, we will consider the applicability of this section to the information at issue. We will also consider the applicability of your timely-raised exceptions.

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 made confidential by other statutes, such as section 550.065 of the Transportation Code. Transp. Code § 550.065. The submitted information contains a CR-3 accident form you claim is excepted from disclosure by section 550.065 of the Transportation Code. This section provides that, except as provided by subsection (c), accident reports completed pursuant to chapter 550 of the Transportation Code are privileged and confidential. *Id.* § 552.065(b). Section 550.065(c)(4), however, requires 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 accident. *Id.* § 550.065(c)(4). In this instance, the requestor has not provided the department with two of the three pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-3 accident report form you have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses the common-law right to privacy, which protects information if (1) it 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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree the information you have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.³

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we agree the department must withhold the information you have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) excepts from public disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 of the Government Code to keep such information confidential. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). The city must also withhold officers’ former home addresses and telephone information from disclosure. *See* Open Records Decision No. 622 (1994). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information you have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country; [or] (2) a motor vehicle title or registration issued by an agency

³ Because our ruling as to this information is dispositive, we do not address your remaining argument against its disclosure.

of this state or another state or country[.]” Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130). Therefore, the department must withhold the information you have marked under section 552.130.⁴ We have marked additional information that must be withheld on this basis.

Section 552.136 provides “[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”). You inform us an employee’s identification number is used in conjunction with one additional digit in order to form the employee’s credit union account number. Thus, we agree the department must withhold the identification numbers you have marked under section 552.136 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Therefore, the department may withhold the social security numbers you have marked under section 552.147(a).⁵

Finally, we note you have also raised section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and sections 772.318 and 773.092 of the Health and Safety Code. However, you have not identified any information you wish to withhold under these statutes, and we note none of the remaining information is subject to these statutes. Accordingly, this ruling does not address these arguments.

In summary, the department must withhold the information you have marked under (1) section 552.101 in conjunction with section 550.065 of the Transportation Code, (2) section 552.101 in conjunction with common-law privacy, (3) section 552.102(a), (4) section 552.117(a)(2), (5) section 552.130, along with the information we have marked on that basis, and (6) section 552.136. The department may withhold the marked social security numbers under section 552.147. 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.

⁴ We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing the withholding of ten categories of information, including Texas driver’s license and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁵ We note 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 an attorney general decision. Gov’t Code § 552.147(b).

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,



Misty Haber Barham
Assistant Attorney General
Open Records Division

MHB/bs

Ref: ID # 422476

Enc. Submitted documents

c: Requestor
(w/o enclosures)