



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2011

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2011-11989

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# 427402 (DPD# 2011-4815).

The Dallas Police Department (the "department") received a request for all "data pursuit reports" or any other reports regarding police vehicle pursuits for a specified time period. You claim 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 representative sample of information.¹

Initially, we note you have redacted a Texas license plate number and year from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). Redaction of a Texas license plate number without requesting an attorney general's ruling is now permitted pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684. *See* Open Records No. 684 at 7 (2009); *see also* Gov't Code § 552.130(a)(1), (2). However, you do not assert, nor does our review of our records indicate, the department has been authorized to withhold the redacted license plate year without seeking a ruling from this office. *See*

¹We 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.

Gov't Code § 552.301(a). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the department must not redact other motor vehicle record information from the information it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See id.* §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

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 other statutes make confidential. Section 730.004 of the Transportation Code provides “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 Texas Department of Transportation (“TxDoT”) is an “agency” for purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). You state the information you have marked was obtained by the city from TxDoT 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 the department must withhold the name and address of the individual obtained from TxDoT under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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 Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You have marked information you claim is protected by common-law privacy. We note the report reflects the individual concerned was arrested for the offense of driving while intoxicated. Although the information at issue may be intimate or embarrassing, we find there is a legitimate public interest in this information in this context because it relates to alleged criminal behavior. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Thus, the department may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with

common-law privacy. As you raise no further exception for this information, it must be released.

You raise section 552.130 of the Government Code for portions of the remaining information. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state, another state, or country is excepted from public release. 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). Accordingly, the department must withhold the information you have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information you have marked under sections 730.004 and 730.013 of the Transportation Code in conjunction with section 552.101 of the Government Code. The department must withhold the information you have marked under section 552.130 of the Government Code. The department must release the remaining information.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 427402

Enc. Submitted documents

c: Requestor
(w/o enclosures)