



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2011

Ms. Marivi Gambini
Paralegal
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2011-13807

Dear Ms. Gambini:

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# 433102.

The City of Irving (the "city") received a request for documentation of expenses submitted to the city, advances issued by the city, and expenses paid by the city related to a specified trip taken by a named city councilwoman. You state the city has released most of the requested information. You claim the named councilwoman's passport number is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric

treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. In this instance, you state the passport number on the submitted airport reservation application “is a type of personal information that is excepted from public disclosure under common-law privacy.” However, you do not explain how this number is highly intimate or embarrassing such that it could be protected by common-law privacy. Therefore, we conclude you failed to demonstrate how the passport number is protected by common-law privacy, and it may not be withheld on that basis.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information 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;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

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). You contend the passport number you marked is excepted by section 552.130 because it is a personal identification number. However, as stated in its heading, this section applies to motor vehicle records. Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 21 (to be codified as an amendment to the heading of Gov’t Code § 552.130 to read the following: “EXCEPTION: CONFIDENTIALITY OF CERTAIN MOTOR VEHICLE RECORDS”); *cf.* Gov’t Code § 552.130(b) (providing Transp. Code ch. 730 governs release of information subject to Gov’t Code § 552.130(a)). You do not explain how the submitted passport number is motor vehicle record information so as to fall within section 552.130, and this number may not be withheld.

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.”¹ Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll

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

database of the Texas Comptroller of Public Accounts. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). We have marked the councilwoman's date of birth in the submitted application, which the city must withhold under section 552.102(a) of the Government Code.

Section 552.117 of the Government Code may also be applicable to some of the submitted information. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. 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)). Section 552.117 is also applicable to a personal cellular telephone number, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (Gov't Code § 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. The city may only withhold information under section 552.117(a)(1) on behalf of officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, if the councilwoman whose personal information we have marked elected to keep this information confidential, the city must withhold this information under section 552.117(a)(1) of the Government Code; however, the city may only withhold the councilwoman's cellular telephone number if the city does not pay for its cellular telephone service. The city may not withhold this information if the official did not make a timely election to keep the information confidential.

In summary, the city must withhold the named councilwoman's date of birth under section 552.102(a) of the Government Code. The city must additionally withhold the personal information we marked under section 552.117(a)(1) of the Government Code if the named councilwoman timely elected to keep the information confidential, but may not withhold the councilwoman's cellular telephone number if the city pays for the cellular telephone service. The remaining information must be released.

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 black ink, appearing to read 'Bob Davis', with a stylized flourish at the end.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/akg

Ref: ID# 433102

Enc. Submitted documents

c: Requestor
(w/o enclosures)