



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2011

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

OR2011-15169

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# 433319 (DPD Request No. 2011-6668).

The Dallas Police Department (the "department") received a request for all offense reports and related records associated with the requestor's arrest. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the department received the request for information on July 27, 2011. You did not, however, request a ruling from this office until August 15, 2011. *See id.* § 552.308 (describing rules

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.

for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the department failed to comply with the requirements of section 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 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). Although you raise section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Because section 552.108 does not provide a compelling reason for non-disclosure, in failing to comply with section 552.301, the department waived its claim under that exception. Thus, the department may not withhold any of the submitted information on the basis of section 552.108 of the Government Code. We note, however, some of the submitted information may be subject to section 552.1175 of the Government Code.² Because sections 552.101, 552.1175, and 552.130 of the Government Code can provide compelling reasons to withhold information, we will consider whether these exceptions require the department to withhold the submitted records.

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 made confidential by other statutes, such as section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 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). We understand the City of Dallas to be part of an emergency communication district that was established under section 772.318.

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

You have marked the telephone number of a 9-1-1 caller that the department seeks to withhold. We conclude the department must withhold the marked telephone number under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, to the extent it consists of an originating telephone number that was furnished by a 9-1-1 service supplier. If the marked telephone number is not an originating telephone number provided by a 9-1-1 service supplier, the marked information may not be withheld under section 552.101 in conjunction with section 772.318.

Section 552.101 of the Government Code 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. *See 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 that personal financial information not related to a financial transaction between an individual and a governmental body is highly intimate or embarrassing and of no legitimate public interest. *See Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).* We note that the lien information that you have marked pertains to a vehicle owned by a company. Common-law privacy protects the privacy interests of individuals, but not of corporations or other types of business organizations. *See Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); see also U. S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990) (corporation has no right to privacy). Accordingly, we conclude the lien information you have marked is not protected under the doctrine of common-law privacy and may not be withheld under section 552.101 on that basis.

Section 552.1175(b) of the Government Code provides:

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). The remaining information contains the personal information of a individual who appears to be a commissioned security officer for purpose of section 1702.002. *See* Occ. Code § 1701.002(5) (defining "commissioned security officer" as a security officer to whom a security officer commission has been issued by the Texas Private Security Board). The department must withhold the information we have marked under section 552.1175 of the Government Code if it relates to a commissioned security officer who elects to restrict access to the information in accordance with section 552.1175(b). However, if the individual to whom the information pertains is not a commissioned security officer or does not elect to restrict access to his information, the department may not withhold the information we have marked under section 552.1175.

You have marked some of the remaining information under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of 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 amendments to Gov't Code § 552.130(a)(1), (2)). In this instance, some of the information you seek to withhold belongs to the requestor. The requestor has a right of access under section 552.023 of the Government Code to his own motor vehicle record information. Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates on grounds information is considered confidential under privacy principles). Consequently, the department may not withhold the requestor's own motor vehicle record information in the remaining information under section 552.130 of the Government Code. However, some of the motor vehicle information in the remaining information consists of motor vehicle record information of individuals other than the requestor. Accordingly, the department must withhold the motor vehicle record information we have marked in the remaining information and indicated on the audio recording, under section 552.130 of the Government Code.

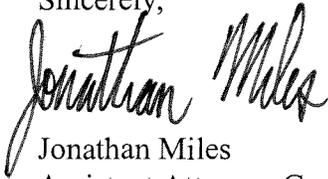
In summary, the department must withhold the marked telephone number under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, to the extent it consists of an originating telephone number that was furnished by a 9-1-1 service supplier. The department must withhold the information we have marked under section 552.1175 of the Government Code if it relates to a commissioned security officer who elects to restrict access to the information in accordance with section 552.1175(b). The department must withhold the motor vehicle record information we have marked in the remaining information and indicated on the audio recording, under section 552.130 of the Government Code. The remaining information must be released.³

³We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Accordingly, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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 that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 433319

Enc. Submitted documents

c: Requestor
(w/o enclosures)