



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2011

Mr. John Ohnemiller
First Assistant City Attorney
P.O. Box 1152
Midland, Texas 79702-1152

OR2011-18119

Dear Mr. Ohnemiller:

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# 438536.

The City of Midland (the "city") received a request for information pertaining to an Odessa Police Department police officer during a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 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. Section 552.101 encompasses the common-law right of privacy, which protects information if it (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. 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. *Id.* at 683. This office has found that 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). Upon review, we find that the information we have marked in the submitted report and the information at time marks 5:27 on video recordings 031841_main and 031841_sub, :056 and 16:58 on video recording 032225_main, 00:25 on audio recording 08-05-11 10-11-55p 911F, and 00:28 on audio recording 08-05-11 10-20-44p Disp 1 (100) is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the city must withhold the information we have marked in the report and indicated in the video and audio recordings pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate that any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, 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 or section 552.1175 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)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117 only applies to information the city holds in its capacity as an employer. Upon our review, we find a majority of the remaining information pertains to an officer of the Odessa Police Department; thus, the city may not withhold this individual's information on the basis of section 552.117. However, we note portions of one of the submitted video recordings relate to an individual who is employed by the city's Police Department. Accordingly, the city must withhold the information at time marks 17:00 and 17:18 of video recording 032225_main under section 552.117(a)(2) of the Government Code.

Section 552.1175 of the Government Code applies to information pertaining to peace officers that the city does not hold in an employment context and provides, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(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.

Gov't Code § 552.1175(a)(1); 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)).¹ Section 552.1175 is also applicable to personal pager and cellular telephone numbers, provided the cellular telephone service or pager service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Upon review, we determine the city must withhold the information pertaining to the Odessa Police Department officer we have marked in the submitted report and the same corresponding information that is within the submitted video and audio recordings, under section 552.1175 if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b). If the individual is no longer a licensed peace officer or no election is made, the city may not withhold the individual's information under section 552.1175 of the Government Code. Additionally, the city may withhold the cellular telephone number at issue only if the cellular telephone service is not paid for with government funds.

We note portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas, 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(a)). We find the city must withhold the information we have marked in the submitted report and the portions of the submitted video recordings that depict a discernible license plate number under section 552.130 of the Government Code.²

¹The 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).

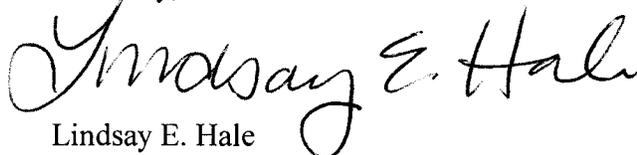
²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including the portion of a video depicting a discernible Texas license plate number under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked in the report and indicated in the video and audio recordings pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we indicated in video recording 032225_main under section 552.117(a)(2) of the Government Code. The city must withhold the information pertaining to the Odessa Police Department officer we have marked in the submitted report, and the same corresponding information within the submitted video and audio recordings, under section 552.1175 if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information. The city must withhold the cellular telephone number at issue only if the cellular telephone service is not paid for with government funds. The city must withhold the information we have marked in the submitted report and the portions of the submitted video recordings that depict a discernible license plate number under section 552.130 of the Government Code. The city 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 438536

Enc. Submitted documents

c: Requestor
(w/o enclosures)