



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 13, 2012

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2012-03730

Dear Ms. Graham:

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# 448497.

The Mesquite Police Department (the "department") received a request for all calls for service and police reports related to a specified address during a three-year time period and two specified police reports. You state some information has been released to the requestor. You further state the department will redact social security numbers pursuant to section 552.147 of the Government Code in any information being released.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301(e-1) of the Government Code requires a governmental body that submits written comments requesting a ruling to the attorney general under subsection 552.301(e)(1)(A), to send a copy of those comments to the person who requested the information from the governmental body not later than the fifteenth business day after the date of receiving the written request. Gov't Code § 552.301(e-1). Section 552.301(e-1) authorizes the governmental body to redact information from those written comments that discloses or contains the substance of the

¹We 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 a decision from this office. See Gov't Code § 552.147(b).

information requested. *Id.* You state you redacted the department's argument under section 552.117 in its entirety from the written comments provided to the requestor. Upon review, we find the redacted portions of the department's comments neither disclose nor contain the substance of the submitted information. We, therefore, conclude the department failed to comply with section 552.301(e-1) in requesting a decision under section 552.117 of the Government Code.

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 the governmental body demonstrates a compelling reason 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). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). As section 552.117 can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note section 552.117 applies only to information held by a governmental body in an employment context. Thus, information that is not held in an employment context may not be withheld under section 552.117(a)(1). Upon review, we find the department does not employ the persons at issue, and the submitted information is held by the department in a law enforcement context rather than an employment context. Accordingly, the department may not withhold any of the submitted information on the basis of section 552.117(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses 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). Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d 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). This office has also 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). You seek to withhold marked portions of the submitted information under section 552.101 in conjunction with common-law privacy. Upon review, we find you have failed to demonstrate this information is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department may not withhold any of the submitted information on the basis of section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information related to a motor vehicle operator's license 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. Gov't Code § 552.130(a)(1), (2). Upon review, we find 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 section 552.130 of the Government Code. 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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 448479

Enc. Submitted documents

c: Requestor
(w/o enclosures)