



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 21, 2012

Mr. Bryan McWilliams  
Assistant City Attorney  
City of Amarillo  
200 South East Third Avenue  
Amarillo, Texas 79101-1514

OR2012-07616

Dear Mr. McWilliams:

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# 454320 (ORR# 12-368).

The Amarillo Police Department (the "department") received a request for information pertaining to a specified accident. You state the department has released some of the responsive information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). The department received the request for information on February 28, 2012. You do not inform us the department was closed for any business days between February 28, 2012, and March 13, 2012. Accordingly, you were required to provide the information required by section 552.301(b) by March 13, 2012. The envelope in which the department provided the information required by subsection 552.301(b) was postmarked March 16, 2012. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail,

common or contract carrier, or interagency mail). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). Because sections 552.101, 552.1175, and 552.130 of the Government Code can provide compelling reasons to overcome this presumption, we will address the applicability of these sections to the submitted information.<sup>1</sup>

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. The type of information considered intimate and 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 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. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 343 (1982) (references in emergency medical records to drug overdoses, acute alcohol intoxication, obstetrical or gynecological illnesses, convulsions or seizures, and emotional or mental distress). Upon review, we find the information you marked in the submitted documents and the information we noted in the submitted video recording is highly intimate or embarrassing and not of legitimate public concern. Therefore, the information you marked and the information we noted is generally confidential under common-law privacy. In this instance, however, the requestor is the child of an individual whose privacy interest is at issue, and may be that individual's authorized representative.

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<sup>1</sup>The 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).

Thus, if the requestor is the authorized representative of her father, then the requestor has a right of access to her father's private information under section 552.023 of the Government Code and it may not be withheld from her under section 552.101 in conjunction with common-law privacy. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In that instance, the department must withhold only that information you marked and the information we noted pertaining to the other individual under section 552.101 in conjunction with common-law privacy. If the requestor is not her father's authorized representative, then the department must withhold the information you marked and the information we noted pertaining to both individuals under section 552.101 in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information you noted in the submitted video recordings is highly intimate and embarrassing, and the department may not withhold any of the remaining information you noted under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code 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), (b). Some of the remaining information relates to an officer of the department and the information is not held in an employment capacity. Accordingly, if the information at issue, which we have noted in the submitted audio recording, relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the information we have noted under section 552.1175 of the Government Code. Conversely, if the peace officer whose

information is at issue does not elect to restrict access to the information in accordance with section 552.1175(b), the information may not be withheld under section 552.1175.

Section 552.130 of the Government Code 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 or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the department must generally withhold the motor vehicle record information we have marked in the submitted documents, as well as any discernible license plate numbers in the submitted video recordings, under section 552.130 of the Government Code. We note section 552.130 protects personal privacy. As noted above, the requestor may be her father's authorized representative. Thus, if the requestor is the authorized representative of her father, then the requestor has a right of access to her father's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. In that instance, the department must withhold the remaining marked motor vehicle record information in the submitted documents and any discernible license plates in the submitted video recordings under section 552.130 of the Government Code. If the requestor is not her father's authorized representative, then the department must withhold all the marked motor vehicle record information in the submitted documents and any discernible license plates in the submitted video recordings under section 552.130 of the Government Code.

In summary, the department must withhold (1) the information you marked in the submitted documents and the information we noted in the submitted video recordings under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the motor vehicle record information we marked in the submitted documents, as well as any discernible license plates in the submitted video recordings, under section 552.130 of the Government Code; and (3) the information we noted in the submitted video recordings under section 552.1175 of the Government Code if the officer to whom the information relates elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code. However, the department must withhold any private or motor vehicle record information pertaining to the requestor's father only if the requestor is not acting as her father's authorized representative. The remaining submitted 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](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 "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 454320

Enc. Submitted documents

c: Requestor  
(w/o enclosures)