



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2012

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2012-07729

Dear Ms. Villarreal:

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# 454377 (Waco Reference No. LGL 12-407).

The Waco Police Department (the "department") received a request for a specified investigation file. You claim portions of the submitted information are 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 representative sample of information.¹

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(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or

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.

sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You inform us the department received the request on March 5, 2012. Accordingly, the department's fifteen-business-day deadline was March 26, 2012. However, you did not submit general written comments stating why the claimed exceptions apply, a copy of the written request for information, or a representative sample of the specific information requested until March 28, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* Open Records Decision No. 630 (1994). You assert the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. Because these exceptions can provide compelling reasons for non-disclosure, we will address your arguments.

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. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 also 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. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Common-law privacy also encompasses certain types of personal financial information. This office has found personal financial information not relating to

a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note the right to privacy is a personal right that lapses at death and, therefore, may not be asserted solely on behalf of a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App. — Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Upon review, we find the information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Further, the video recording we have noted contains information that is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department must generally withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. We note a portion of the information we marked pertains to a deceased individual. Thus, if this marked information relates only to a deceased individual, this information is not protected by common-law privacy and may not be withheld on that basis under section 552.101 of the Government Code. If a living individual owns an interest in this information, then the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. In either case, the department must withhold the remaining information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, you state the department does not have the technological capability to redact the video recordings. Thus, the department must withhold the video recording we have indicated in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision No. 364 (1983). Upon review, we find you have failed to demonstrate any portion of the remaining information you have marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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. Gov't Code § 552.130(a). Upon review, we find the submitted information contains information subject to section 552.130. We note, however, one individual whose motor vehicle record information is at issue in the submitted documents is deceased. The purpose of section 552.130 is to protect the privacy interests of individuals and the right of privacy lapses at death. Therefore, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d

at 491; *see also* Attorney General Opinions JM-229 (1984), H-917 (1976); ORD 272 at 1. The information at issue relates to a vehicle owned by the deceased individual. Accordingly, the information that pertains to the deceased individual's vehicle must be withheld under section 552.130 if a living person owns an interest in the vehicle at issue. If no living person owns an interest in the vehicle, then the information relating to the vehicle may not be withheld under section 552.130. In either case, the department must withhold the remaining motor vehicle information we have marked in the submitted documents under section 552.130 of the Government Code. We also note the submitted video recordings we have indicated contain Texas license plate numbers that are subject to section 552.130. Because you indicate the department does not have the technical capability to redact this information, we conclude the department must withhold the indicated video recordings in their entirety under section 552.130 of the Government Code. *See* ORD 364. However, the remaining information you have marked under section 552.130 does not consist of or contain motor vehicle record information and may not be withheld on that basis.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”² Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). We note the purpose of section 552.136 is to protect the privacy interests of individuals. As noted above, because the right of privacy lapses at death, information that pertains solely to deceased individuals may not be withheld under section 552.136. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272 at 1. Upon review, if a living person owns an interest in the insurance policy number we have marked, the department must withhold this information under section 552.136 of the Government Code. If no living person owns an interest in the information at issue, the department may not withhold the marked information under section 552.136.

In summary, the department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the marked information relates only to a deceased individual, this information is not protected by common-law privacy and may not be withheld on that basis under section 552.101 of the Government Code. The department must withhold the motor vehicle record information we have marked that pertains to living individuals under section 552.130 of the Government Code. The department must withhold the motor vehicle record information relating to the deceased individual under section 552.130 of the Government Code if a living person owns an interest in the vehicle at issue. The department must withhold the indicated video recordings in their entirety under section 552.130 of the Government Code. If a living persons owns an interest in the insurance policy number we

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

have marked, the department must withhold this information under section 552.136 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,



Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/em

Ref: ID# 454377

Enc. Submitted documents

c: Requestor
(w/o enclosures)