



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2012

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

OR2012-14579

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# 464833.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified incident. You state the department will release some of the requested information with the redaction of certain motor vehicle information under section 552.130(c) of the Government Code and Texas license plate numbers under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You state you will also redact certain information pursuant to Open Records Letter Nos. 2011-15075 (2011), 2012-06459 (2012), and 2012-01375 (2012).² You claim some of

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e). Open Records Decision No. 684 permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision.

²Open Records Letter No. 2011-15075 is a previous determination to the department authorizing the department to withhold the originating telephone numbers of 9-1-1 callers furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code without requesting a decision from this office. Open Records Letter Nos. 2012-06459 and 2012-01375 are previous determinations to the department authorizing the department to withhold the price of a motor vehicle and information that reveals the existence of a motor vehicle lien, respectively, from a call sheet under section 552.101 in conjunction with common-law privacy, without requesting a decision from this office.

the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 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. This section encompasses information protected by other statutes, such as section 143.090 of the Local Government Code. You state the City of Mesquite is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides as follows:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You state some of the submitted photographs depict department police officers. You do not indicate the police officers depicted in the submitted photographs have provided the department with written consent to release the photographs. You do not inform us, and it does not appear, that any of the exceptions to withholding the photographs under section 143.090 are applicable. Therefore, we conclude the department must withhold the police officers' photographs, which we have marked, under section 552.101 in conjunction with section 143.090 of the Local Government Code. However, the remaining information does not depict department police officers and may not be withheld under section 552.101 on the basis of section 143.090.

Section 552.101 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. *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 found

that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); *see also* 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 of legitimate public concern. Therefore, to the extent the information we have marked pertains to a living individual, the department must withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. If the marked information pertains solely to a deceased individual, it may not be withheld under section 552.101 on the basis of common-law privacy.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Accordingly, the department must withhold the motor vehicle record information you have marked and the information we have marked under section 552.130 of the Government Code.

Section 552.136(b) 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. We note the purpose of section 552.136 is to protect the privacy interests of individuals. As previously noted, 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; *Justice*, 472 F. Supp. at 146-47, *see also* ORD 272 at 1. Therefore, if a living person owns an interest in the insurance policy numbers you 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 police officers' photographs, which we have marked, under section 552.101 in conjunction with section 143.090 of the Local Government Code. To the extent the information we have marked pertains to a living individual, the department must withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you have marked and the information we have marked

under section 552.130 of the Government Code. If a living person owns an interest in the insurance policy numbers you have marked, the department must withhold this information under section 552.136 of the Government Code. The remaining information must be released.

You ask this office to issue a previous determination that would permit the department to withhold vehicle identification numbers and information pertaining to a motor vehicle registration under section 552.130(a)(2) of the Government Code, without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 464833

Enc. Submitted documents

c: Requestor
(w/o enclosures)