



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2012

Ms. Heather Stebbins
Assistant City Attorney
City of Kerrville
800 Junction Highway
Kerrville, Texas 78028-2215

OR2012-15918

Dear Ms. Stebbins:

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# 467214.

The City of Kerrville (the "city") received a request for information pertaining to a specified incident. You claim some of the requested information is excepted from disclosure under sections 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state you have submitted for our review "some of" the responsive documents the city collected in response to the instant request. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy 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 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). This office has also 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.); 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, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, and a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1)-(3). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, the motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. See *Moore*, 589 S.W.2d at 491; see also ORD 272 at 1. Upon review, we find the submitted driver's license and identification card pertain solely to a deceased individual. Accordingly, the city may not withhold any of the remaining information under section 552.130 of the Government Code.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, 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). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument

identifier or means of account access that alone or in conjunction with another access device may be used to ... obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). We note section 552.136 also protects the privacy interests of individuals, and, as previously noted, the right to privacy lapses at death. *See Moore*, 589 S.W.2d at 491. Therefore, if the credit and debit card numbers and expiration dates we have marked pertain solely to a deceased individual, they may not be withheld under section 552.136. If the credit and debit card numbers and expiration dates we have marked pertain to accounts in which a living individual has an interest, the city must withhold the marked credit and debit card information under section 552.136. The city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

Next, you seek to withhold portions of the remaining information under section 552.147 of the Government Code. This section provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.² Gov’t Code § 552.147(a). Accordingly, the city may withhold the social security numbers of living individuals within the remaining information under section 552.147 of the Government Code.

In summary, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. If the credit and debit card numbers and expiration dates we have marked pertain to accounts in which a living individual has an interest, the city must withhold the marked credit and debit card information under section 552.136 of the Government Code. The city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The city may withhold the social security numbers of living individuals within the remaining information under section 552.147 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

²We 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 under the Act. Gov’t Code § 552.147(b).

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 cursive script that reads "Jennifer Luttrall".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 467214

Enc. Submitted documents

c: Requestor
(w/o enclosures)