



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2013

Mr. Charles H. Weir
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2013-06760

Dear Mr. Weir:

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# 485248 (COSA File Nos. W013077 and W013561).

The San Antonio Police Department (the "department") received two requests from different requestors for information pertaining to case number 13014112. You claim 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 with respect to the first request for information. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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 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 first request for information on February 4, 2013. Thus, the department's fifteen-business-day deadline with respect to this request was February 26, 2013. We note, however, the department submitted the requested

information and general written comments stating the reasons why the stated exception applies to this information in an envelope meter-marked March 7, 2013. *See id.* § 552.308(a) (deadline under Act is met if document bears post office mark indicating time within deadline period). Therefore, we find the department failed to comply with the requirements of section 552.301(e) of the Government Code with respect to the first request for information.

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 information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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). 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* ORD 630. Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your argument under this section. We will also address the applicability of section 552.130 of the Government Code to portions of the submitted information.¹

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 the common-law right of privacy, which protects information if it (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 types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

¹The 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).

In this instance, the submitted information reveals the second requestor knows the identity of the individual involved, as well as the nature of the incident at issue. Therefore, withholding only the involved individual's identity or certain details of the incident from this requestor would not preserve the individual's common-law right to privacy. Accordingly, we agree the submitted information must be withheld in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which this information must be withheld in its entirety from the first requestor on the basis of common-law privacy. Upon review, however, we agree that portions of the information at issue are highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department must withhold the information we have marked from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The department has failed to demonstrate, however, how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any of this information from the first requestor under section 552.101 in conjunction with common-law privacy.

Section 552.130(a)(1) of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the driver's license information we have marked from the first requestor under section 552.130(a)(1) of the Government Code.

In summary, the department must withhold the submitted information from the second requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With respect to the first requestor, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the driver's license information we have marked under section 552.130(a)(1) of the Government Code. As no further exceptions to disclosure are raised for the remaining information, the department must release it to the first requestor.²

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,

²We note the information being released to the first requestor includes social security numbers. 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. *See* Gov't Code § 552.147(b).

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 485248

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)