



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2013

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2013-07602

Dear Ms. Quinn:

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# 486586 (City Reference Nos. 13-386 & 13-387).

The Cedar Park Police Department (the "department") received the following: (1) a request for 9-1-1 calls, dash camera video, and the certified crash report for a specified incident and (2) a request from a different requestor for information pertaining to the same incident, including "all stoplight/surveillance camera footage" for the stoplight at a specified location. You state the department does not possess the stoplight/surveillance camera footage sought in the second request.¹ You state the department will release some of the requested information. You also state the department will withhold the driver's license numbers you have marked under section 552.130(c) of the Government Code and the Texas license plate numbers you have marked pursuant to Open Records Decision No. 684 (2009).² You claim some of the submitted information is excepted from disclosure under

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). Gov't Code § 552.130(c); see also *id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including a Texas license plate number under section 552.130 of the Government Code. ORD 684.

sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the first request seeks only 9-1-1 calls, dash camera video, and the certified crash report for the specified incident. Thus, any information other than these types of information is not responsive to the first request. Accordingly, the department need not release information to the first requestor that is not responsive to her request, and this ruling will not address the public availability of the non-responsive information with respect to the first request.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types 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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 600 at 9-10 (1992) (employee's withholding allowance certificate, designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, 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), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). Upon our review, we agree the information you have marked contains personal financial details that are highly intimate or embarrassing and not of legitimate public interest. Therefore, we conclude the department must withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the audio portion of the video recording you have labeled as Exhibit C contains information subject to section 552.130. The audio portion of this recording is intertwined with the video portion of the recording. You state the department does not have the technological capability to

redact the motor vehicle record information from the recording at issue. Accordingly, the department must withhold Exhibit C in its entirety under section 552.130. *See* Open Records Decision No. 364 (1983). We also conclude the department must withhold the vehicle identification numbers you have marked and the additional information we have marked in Exhibit B under section 552.130.

Section 552.136 of the Government Code states, "Notwithstanding 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); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. ORD 684. Accordingly, the department must withhold the insurance policy numbers you have marked in Exhibit B under section 552.136.

In summary, the department must withhold the following: (1) the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) Exhibit C in its entirety, the vehicle identification numbers you have marked in Exhibit B, and the additional information we have marked in Exhibit B under section 552.130 of the Government Code; and (3) the insurance policy numbers you have marked in Exhibit B under section 552.136 of the Government Code. The department must release the remaining information. However, the department need not release information to the first requestor that is not responsive to her request for information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 486586

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)