



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2013

Mr. Jason M. Rammel
Sheets & Crossfield, P.C.
390 East Main Street
Round Rock, Texas 78664-5246

OR2013-10790

Dear Mr. Rammel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 491475.

The City of Hutto (the "city"), which you represent, received a request for two specified police reports pertaining to a named person. The city asserts some of the information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and have reviewed the submitted information.

First, the city acknowledged it failed to comply with section 552.301(b) of the Government Code, which requires a governmental body to request a decision from this office and assert the applicable exceptions to withhold the requested information within ten business days of receiving the written request for information. Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. *Id.* § 552.302. 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 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). This office has held a compelling reason exists to withhold information when the information is confidential by another source of law. *See Open Records Decision No. 150 (1977)* (presumption of openness overcome by

a showing that the information is made confidential by another source of law or affects third party interests). Section 552.101 is such a compelling reason. Moreover, section 552.130 of the Government Code is also a compelling reason to overcome the presumption of openness for purposes of section 552.302 because it makes information confidential. Thus, we will consider the applicability of sections 552.101 and 552.130 to the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. This office has 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). Upon review of the information, we conclude the information we marked is highly intimate and embarrassing and of no legitimate public interest. Thus, the city must withhold the information we marked under section 552.101 in conjunction with common-law privacy.

We further note the reports contain motor vehicle record information subject to section 552.130(a)(1) of the Government Code, which excepts from public disclosure information relating to a driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Thus, the city must withhold the driver's license information we marked under section 552.130(a)(1).

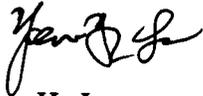
In summary, the city must withhold the information we marked under section 552.101 in conjunction with common-law privacy and the driver's license information we marked under section 552.130(a)(1). The city must release the remainder.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', written in a cursive style.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 491475

Enc: Marked documents

c: Requestor
(w/o enclosures)

