



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 31, 2013

Mr. Jason M. Rammel  
Counsel for the City of Hutto  
Sheets & Crossfield, P.C.  
309 Main Street  
Round Rock, Texas 78664-5246

OR2013-13198

Dear Mr. Rammel:

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# 494784.

The City of Hutto (the "city"), which you represent, received a request for information pertaining to a specified incident. You claim that 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, you acknowledge, and we agree, the city failed to meet the statutory deadlines imposed by section 552.301 of the Government Code for the requested information. *See* Gov't Code § 552.301(b). 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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See 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); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630

at 3 (1994), 325 at 2 (1982). You raise section 552.101 of the Government Code for portions of the submitted information. Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to 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. You raise section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See 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 demonstrated. *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. *See id.*

You argue portions of the submitted information are excepted from disclosure under common-law privacy, and in support of your argument, you reference a decision, *U.S. Dep’t of State v. Ray*, 502 U.S. 164 (1991), that decided privacy under section 552(b)(6) of the federal Freedom of Information Act (“FOIA”). However, we note that common-law privacy under the Act differs from the privacy right protected under the exemptions of FOIA. To determine whether the FOIA exceptions prohibit disclosure, federal courts must first determine if an individual has a privacy interest and then balance that interest against the public’s interest in disclosure. *See* 5 U.S.C. §§ 552(b)(6). In applying common-law privacy under Texas law, however, the courts have rejected the balancing of interests test. *See Indus. Found.*, 540 S.W.2d at 681-682 (under policy determination that Texas legislature made in enacting predecessor to section 552.101, court is not free to balance public’s interest in disclosure against harm to person’s privacy). This office will apply common-law privacy as set forth in *Industrial Foundation* rather than under FOIA. *See* Attorney General Opinion MW-95 (1979) (FOIA exceptions apply to federal agencies, not to state agencies); Open Records Decision Nos. 496 (1988), 124 (1976); *see also* Open Records Decision No. 561 at 7 n 3 (1990) (noting that federal authorities may apply confidentiality principles found in FOIA differently from way in which such principles are applied under Texas open records law).

You assert that some of the submitted information is protected by common-law privacy because the information pertains to individuals who are “under the age of ten years.” We note that information pertaining to a minor is not confidential *per se* under common-law privacy. *Cf.* Fam. Code § 58.007 (legislature chose to protect law enforcement records of a child who is ten years of age or older and under 17 years of age at the time of the reported conduct). Furthermore, we find that none of the information at issue is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any

of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>1</sup> Gov't Code § 552.130. Upon review, we find the city must withhold the driver's license number we have marked under section 552.130 of the Government Code.<sup>2</sup>

In summary, the city must withhold the driver's license information we have marked under section 552.130 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>The 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).

<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to 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 Gov't Code § 552.130(d), (e).

Ref: ID# 494784

Enc. Submitted documents

c: Requestor  
(w/o enclosures)