



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2013

Mr. Habib H. Erkan, Jr.  
For the City of Live Oak  
Denton, Navarro, Rocha & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212-4685

OR2013-15682

Dear Mr. Erkan:

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# 498738.

The Live Oak Police Department (the "department"), which you represent, received a request for information pertaining to case numbers 1304-0070 and 1305-0529. You state the department will withhold information subject to section 552.1175 of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portion of the request for information regarding case number 1305-0529. To the extent any information responsive

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<sup>1</sup>Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, date of birth, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. See Gov't Code § 552.1175(f).

to this portion of the request existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes 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." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, including the Driver's Privacy Protection Act of 1994 (the "DPPA"), section 2721 of title 18 of the United States Code. Section 2721 provides, in part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9)[.]

(b) Permissible uses.—Personal information referred to in subsection (a) . . . and, subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions[.]

. . .

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted

purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a), (b)(1), (c). Section 2721(a) is applicable to state departments of motor vehicles. *See id.* § 2721(a). Pursuant to section 2721(b), personal information may be disclosed to certain entities by a state department of motor vehicles. *See id.* § 2721(b). You state the submitted information contains information protected under the DPPA. However, we find the department is not a state department of motor vehicles. Further, you do not state the department received the information at issue from a state department of motor vehicles. Therefore, you have failed to demonstrate any of the submitted information is subject to section 2721(a) of the DPPA. Accordingly, the department may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.005–730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established the department compiles or maintains motor vehicle records; therefore, section 730.004 does not apply to the department.

Pursuant to section 730.007 of the Transportation Code, personal information may be disclosed to an authorized recipient under certain circumstances, including a governmental agency collecting information to carry out its functions. *See id.* § 730.007(a)(2)(A)(I). Section 730.013 of the Transportation Code provides for purposes of chapter 730 of the Transportation Code:

(a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information was disclosed to the recipient by the applicable agency.

(b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.

*Id.* § 730.013(a), (b). You do not represent the department received the information at issue from an agency that compiles or maintains motor vehicle records for purposes of section 730.013. Accordingly, the department may not withhold any part of the submitted information under section 552.101 of the Government Code in conjunction with

section 730.013 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the information you seek to withhold is not highly intimate or embarrassing or is of legitimate public interest. Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the department will redact Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers belonging to individuals other than the requestor pursuant to section 552.130 of the Government Code.<sup>2</sup> We note the submitted information contains additional motor vehicle record information subject to section 552.130, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the department must withhold the additional information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining 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.texasattorneygeneral.gov/open/>

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<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).

[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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/akg

Ref: ID# 498738

Enc. Submitted documents

c: Requestor  
(w/o enclosures)