



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2013

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2013-19462

Dear Ms. Villarreal:

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# 505010 (City of Waco Reference Nos. LGL 13-574 and LGL 13-595).

The City of Waco (the "city") received two requests from different requestors for information related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under the Act. Subsection (b) of section 552.301 of the Government Code requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business-day after the date of receiving the written request." Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under the Act is required to submit to this office within fifteen business days of receiving the 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 id.* § 552.301(e). Generally, if a governmental body

fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions).

We note in the information submitted to this office in response to the first request, you marked a portion of the information to be withheld under section 552.108 of the Government Code. However, you did not so mark the remaining information. In response to the second request, you submitted the same information, but marked additional information to be withheld under section 552.108 that you did not originally seek to withhold under that exception. Thus, by failing to claim section 552.108 for the information at issue in response to the first request, we find you failed to timely raise section 552.108 for this information, and thus, have waived your argument under section 552.108 with regards to the information at issue, which we have marked. *See Gov't Code* §§ 552.007 (prohibiting selective disclosure of information), .302; Open Records Decision No. 463 at 1-2 (1987). However, we will address your timely raised exceptions for the information at issue, as well as your arguments for the remaining information.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) of the Government Code provides for the required public disclosure of "information that is also contained in a public court record." Gov't Code § 552.022(a)(17). We have marked copies of a court-filed document that is subject to section 552.022(a)(17) of the Government Code. This information must be released unless it is made confidential under the Act or other law. *See id.* You raise section 552.108 of the Government Code for this information. However, section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the city may not withhold the copies of the court-filed document under section 552.108. We note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the submitted copies of the court-filed document may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure for this information, the city must release the copies of the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code.

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 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). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation, Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated 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. In this case, both requestors know the identity of the individual involved as well as the nature of the information in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestors would not preserve the subject individual's common-law right of privacy.

However, in this instance, the first requestor is an authorized representative of the individual whose privacy interests are at issue. Thus, the first requestor has a right of access to information pertaining to that individual that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the city may not withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, we note the second requestor may also be an authorized representative of the individual whose privacy interests are at issue. Because we are unable to determine whether the second requestor is an authorized representative of the individual at issue, we must rule conditionally with regards to this requestor. Accordingly, if the second requestor is not acting as the authorized representative of the individual whose privacy interests are at issue, the city must withhold the submitted information not subject to section 552.022 of the Government Code from that requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the second requestor is acting as an authorized representative of the individual whose privacy interests are at issue, the city may not withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, we address your arguments under section 552.108 of the Government Code.

You argue portions of the submitted information may be withheld under section 552.108 of the Government Code. Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You provide a representation from the city police department that the submitted information relates to an open criminal case. Based on this representation, we conclude the

release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, with the exception of the information submitted in response to the second request we have marked, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

We note some of the information to be released is subject to section 552.130 of the Government Code.¹ Section 552.130 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 city must withhold the driver's license information we have marked under section 552.130 of the Government Code.²

In summary, if the second requestor is not acting as the authorized representative of the individual whose privacy interests are at issue, the city must withhold the submitted information not subject to section 552.022 of the Government Code from that requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information subject to section 552.022 of the Government Code, and the information submitted in response to the second request we have marked, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. 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.³

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See Open Records Decision Nos.* 481 (1987), 480 (1987), 470 (1987).

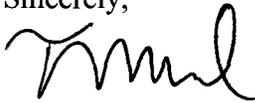
²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See Gov't Code* § 552.130(d), (e).

³Because the first requestor has a special right of access to the information being released in this instance, and the second requestor may have a special right of access to the information being released in this instance, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office. *See Gov't Code* §§ 552.023, .301, .302; *Open Records Decision No.* 673(2001). In addition, we note the information to be released contains an individual's social security number. 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. *Gov't Code* § 552.147(b).

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 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/tch

Ref: ID# 505010

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)