



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 11, 2013

Ms. Sylvia McClellan  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2013-21517

Dear Ms. McClellan:

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# 508310 (DPD Ref. No. 2013-10924).

The Dallas Police Department (the "department") received a request for specified use of force reports, including certain categories of information. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note, and you acknowledge, the department failed to meet the ten-business-day deadline prescribed by section 552.301(b) of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b). We note the department also failed to comply with its fifteen-business-day deadline under section 552.301(e). *See id.* § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

presumption 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because sections 552.101 and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider your arguments under these sections.

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 common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find most of the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find some of the information you seek to withhold is not highly intimate or embarrassing and of no legitimate public concern. Therefore, that information, which we have marked for release, may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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 id.* § 552.136(a) (defining “access device”). You inform us an employee identification number includes an employee’s credit union account number. Accordingly, the department must withhold the information you marked under section 552.136 of the Government Code.

In summary, with the exception of the information we have marked for release, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you marked under section 552.136 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,

A handwritten signature in black ink, appearing to read 'T. Strain', written over a horizontal line.

Tamara R. Strain  
Assistant Attorney General  
Open Records Division

TRS/bhf

Ref: ID# 508310

Enc. Submitted documents

c: Requestor  
(w/o enclosures)