



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 16, 2014

Ms. Maria Gonzalez  
City Secretary  
City of Missouri City  
1522 Texas Parkway  
Missouri City, Texas 77489

OR2014-01067

Dear Ms. Gonzalez:

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# 511323.

The City of Missouri City (the "city") received a request for the following information: (1) a specified police report alleging threats; (2) all records pertaining to statements, complaints, or the investigation of an individual for posting on a specified web page, including e-mails sent by city employees and officials involving a specified web page; and (3) the police report and any video for a specified traffic stop and arrest of a named individual. You state the city does not possess any information responsive to the first category of the request.<sup>1</sup> Additionally, you state you have released some of the responsive information. You claim portions of the submitted information are excepted from disclosure under sections 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> Gov't Code § 552.101. Section 552.101 encompasses the doctrine of 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. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 600 at 9-10 (1992) (employee's withholding allowance certificate, designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* ORD 373.

Upon review, we find portions of the audio of the submitted video recording satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we have indicated under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is

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<sup>2</sup>The 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).

made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

Upon review, we find some of the information you have marked pertains to individuals who are not current or former officials or employees of the city. Consequently, the city may not withhold their information, which we have marked for release, under section 552.117(a)(1). You have submitted confidentiality election forms for some of the current city officials and employees whose information you have marked. As such, the city must withhold the information you have marked, and the additional information we have marked for withholding, that pertains to these individuals who have made timely elections under section 552.117(a)(1), including the personal cellular telephone number if the cellular telephone service is not paid for by a governmental body. The remaining information contains information subject to section 552.117 that pertains to a current city official and a city employee, but for whom you have not submitted confidentiality election forms. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the information you have marked and the additional information we have marked for withholding that pertains to these individuals must be withheld under section 552.117(a)(1), including the personal cellular telephone number if the cellular telephone service is not paid for by a governmental body. The city may not withhold this information under section 552.117 for those individuals who did not make a timely election to keep the information confidential. Additionally, the city must withhold the cellular telephone numbers at issue only if the cellular telephone service is not paid for by a governmental body.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the city must withhold the information you have marked and the information we have indicated in the submitted video recording under section 552.130.<sup>3</sup>

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a

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<sup>3</sup>We 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. 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 id.* § 552.130(d), (e).

contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. Upon review, we note you have marked the e-mail address of the requestor, to which he has a right of access pursuant to section 552.137(b). *See id.* § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). As such, the city may not withhold the requestor's e-mail address, which we have marked for release, under section 552.137. We also note you have marked information that does not consist of an e-mail address and an e-mail address that is subject to section 552.137(c). Accordingly, the city may not withhold this information, which we have marked for release, under section 552.137. The remaining e-mail addresses at issue are not of the types specifically excluded by section 552.137(c). Accordingly, with the exception of the information we have marked for release, the city must withhold the e-mail addresses you have marked and the additional e-mail addresses we have marked for withholding under section 552.137 unless the owners of the addresses affirmatively consent to their release.<sup>4</sup>

In summary, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the information you have marked and the additional information we have marked for withholding must be withheld under section 552.117(a)(1) of the Government Code, including the personal cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. The city must withhold the information you have marked and we have indicated under section 552.130 of the Government Code. With the exception of the information we have marked for release, the city must withhold the e-mail addresses you have marked and the additional e-mail addresses we have marked for withholding under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The city must release the remaining information.<sup>5</sup>

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.

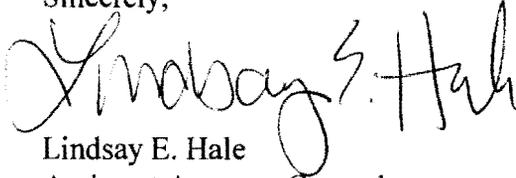
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<sup>4</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>5</sup>We note the requestor has a right of access to his own personal e-mail address in the information that is being released. *See Gov't Code* § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). As previously noted, Open Records Decision No. 684 authorizes governmental bodies to withhold an e-mail address of a member of the public under section 552.137 of the Government Code without requesting an attorney general decision. Thus, if the city receives another request for this same information from a person who does not have such a right of access, Open Records Decision No. 684 authorizes the city to redact this requestor's personal e-mail address. *See ORD 684.*

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 that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 511323

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

