



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2014

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2014-08855

Dear Mr. Weir:

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# 523865 (COSA File Nos. W024860 & W025964).

The City of San Antonio (the "city") received a request for the police report for case number 14035584 and a second request from a different requestor for all information relating to case number 14035584. 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 note the information we have marked is not responsive to the instant requests for information because it does not pertain to case number 14035584. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to these requests.

Next, we must address the obligations of the city under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code § 552.301(b)*. The city received the first request for information on February 25, 2014. Accordingly, you were required to provide the information required by section 552.301(b) by March 11, 2014. However, you submitted the required information

in an envelope meter-marked March 18, 2014. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with regard to the first request.

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 the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. The city claims section 552.108 of the Government Code for the information responsive to the first request. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, no portion of the information responsive to the first request may be withheld under section 552.108 of the Government Code. The city also claims section 552.101 of the Government Code for the information responsive to the first request. Further, we note some of this information is subject to sections 552.130 and 552.136 of the Government Code.¹ Because these sections can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the information responsive to the first request.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

Records Decision Nos. 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).

In Open Records Decision No. 393 (1983), this office concluded, generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The second requestor in this case knows the identity of the alleged victim. We believe, in this instance, withholding only identifying information of the victim from the second requestor would not preserve the victim's common law right to privacy. We conclude, therefore, the city must withhold the submitted information in its entirety from the second requestor pursuant to section 552.101 in conjunction with common-law privacy.²

We note, however, you have not demonstrated, nor does it otherwise appear, the first requestor knows the identity of the alleged victim. Accordingly, the city may not withhold the entirety of the information responsive to the first request from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. We note, because the submitted report relates to an alleged sexual assault, the city is generally required to withhold the identity of the complainant under section 552.101 of the Government Code in conjunction with common-law privacy. *See Indus. Found.*, 540 S.W.2d at 685; ORD 393. However, the alleged victim at issue is identified in the information responsive to the first request only by a pseudonym. The use of a pseudonym sufficiently protects this complainant's identity within those documents. Further, we find you have failed to demonstrate any of the remaining information responsive to the first request is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold any of the remaining information responsive to the first request 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 or 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

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

release. Gov't Code § 552.130. Upon review, we find the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, the city must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the submitted information in its entirety from the second requestor and the information we have marked from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the motor vehicle record information we have marked under section 552.130 of the Government Code and the insurance policy number we have marked under section 552.136 of the Government Code from the first requestor. The city must release the remaining information responsive to the first request to the first requestor.³

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

³We note the information being released contains social security numbers. 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. *See* Gov't Code § 552.147(b).

Ref: ID# 523865

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)