



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 18, 2014

Ms. Amy L. Sims  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2014-14467

Dear Ms. Sims:

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# 533012.

The City of Lubbock (the "city") received a request for information pertaining to a specified car accident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

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<sup>1</sup>The requestor alleges the city failed to comply with section 552.301 of the Government Code by failing to timely seek a ruling from this office regarding her written request for information. 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. *See* Gov't Code § 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 Nos. 319 (1982), 177 (1977). A compelling reason exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Regardless of whether the city failed to comply with section 552.301, because sections 552.101, 552.130, and 552.136 of the Government Code can provide compelling reasons to overcome this presumption, we will address the city's arguments under sections 552.101, 552.130, and 552.136 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.” *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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. This office has concluded personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (employee’s 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), 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). Upon review, we find the information we have marked satisfies the standard articulated by the court in *Industrial Foundation*. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Gov’t Code § 552.130(a)(1)-(2). We have marked the motor vehicle record information that is subject to section 552.130 of the Government Code. We note, however, the requestor in this instance is the insurance provider for one of the individuals listed in the submitted information. As such, this requestor, if acting as the individual’s authorized representative, has a right of access to the insured’s marked motor vehicle record information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear that this requestor is acting as the individual’s authorized representative. Therefore, we must rule conditionally. To the extent the requestor has a right of access under section 552.023 to the insured’s motor vehicle record information, the city must release this information to the requestor. To the extent the requestor does not have a right of access under section 552.023, the city must withhold the insured’s motor vehicle record information, which we have marked, under section 552.130 of the Government Code. In either event, the city must withhold the motor vehicle record information that does not pertain to the requestor’s insured, which we have marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides in part that “[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

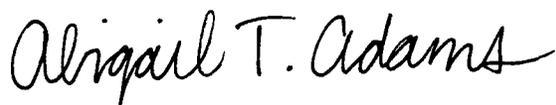
Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of section 552.136. We have marked insurance policy numbers that are subject to section 552.136 of the Government Code. As noted above, however, the requestor is the insurance provider for one of the individuals listed in the submitted information and may have a right of access to the insured’s marked insurance policy number. *See id.* § 552.023(a); ORD 481 at 4. To the extent the requestor has a right of access under section 552.023 to the insured’s insurance policy number, the city must release this information to the requestor. To the extent the requestor does not have a right of access under section 552.023, the city must withhold the insured’s insurance policy number under section 552.136 of the Government Code. In either event, the city must withhold the insurance policy number that does not pertain to the requestor’s insured, which we have marked, under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor does not have a right of access under section 552.023 of the Government Code to its insured’s information, the city must withhold the requestor’s insured’s marked motor vehicle record information under section 552.130 of the Government Code and marked insurance policy number under section 552.136 of the Government Code. In any event, the city must withhold the marked motor vehicle record information that does not pertain to the requestor’s insured under section 552.130 of the Government Code and the marked insurance policy number that does not pertain to the requestor’s insured under section 552.136 of the Government Code. The city 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/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,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/ac

Ref: ID# 533012

Enc. Submitted documents

c: Requestor  
(w/o enclosures)