



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 9, 2014

Ms. Sol M. Cortez  
Assistant City Attorney  
Office of the City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2014-22279

Dear Ms. Cortez:

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# 546214 (El Paso Reference No. 14-1044-388).

The City of El Paso (the "city") received a request for (1) a specified contract between Ruiz Security Services, Inc. ("Ruiz") and the city or Sun Metro; (2) all incident reports prepared by Ruiz documenting an incident with a bicyclist at a specified location on a specified date; (3) all incident reports documenting a report or claim that a guard employed by Ruiz assaulted or injured a person at a specified location on a specified date; and (4) all incident reports or claims asserting a guard employed by Ruiz assaulted or injured a person while working under a contract for security guard services for the city or Sun Metro. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.110, and 552.117 of the Government Code.<sup>1</sup> You also state release of some of this information may implicate the proprietary interests of Ruiz. Accordingly, you state, and provide documentation showing, you notified Ruiz of the request for information and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision

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<sup>1</sup>Although you raised section 552.101 of the Government Code in conjunction with constitutional privacy, you provide no argument explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, .302.

No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we understand you will redact information pursuant to sections 552.130(c), 552.136(c), and 552.147(b) of the Government Code. 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). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). 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 id.* § 552.147(b). However, we note the submitted information contains the requestor's client's driver's license information and social security number. Section 552.130 of the Government Code provides information relating to a driver's license issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1)-(2). We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's driver's license information under section 552.023 of the Government Code and it may not be withheld under section 552.130 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Furthermore, the requestor has a right of access to his client's social security number and it may not be withheld under section 552.147 of the Government Code. *See generally* Gov't Code § 552.023(b).

Next, although the city argues some of the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the city's argument under section 552.110. We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Ruiz explaining why the submitted information should not be released. Therefore, we have no basis to conclude the third party has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of

requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest Ruiz may have in the information.

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 the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing, 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Upon review, we find the submitted information contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor has a special right of access to his client’s information that would ordinarily be withheld to protect his client’s privacy interests. *See* Gov’t Code § 552.023(a)-(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Accordingly, the city may not withhold the requestor’s client’s information under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we find you have failed to demonstrate the remaining information that does not pertain to the requestor’s client is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the submitted information under section 552.101 on that basis.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of specified categories of individuals. *See* Gov’t Code § 552.117. We note, however, section 552.117 applies only to records that a governmental body is holding in an employment capacity. The information at issue is in a police report that is not held by the city in an employment capacity. Therefore, we find section 552.117 of the Government Code does not apply to the information you have marked, and the city may not withhold the information on that basis.

We note portions of the submitted information may be subject to section 552.1175 of the Government Code.<sup>2</sup> Section 552.1175 protects the home address, home telephone number, date of birth, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175. Section 552.1175 applies, in part, to “commissioned security officers as defined by Section 1702.002, Occupations Code[.]” *Id.* § 552.1175(a)(4); *see* Occ. Code § 1702.002(5) (defining “commissioned security officer”). Upon review, we find the city must withhold the information we have marked under section 552.1175 if the individual to whom this information pertains is currently a commissioned security officer and elects to restrict access to her information in accordance with section 552.1175(b) of the Government Code. However, the city may not withhold the information we have marked under section 552.1175 if the individual at issue is not currently a commissioned security officer or no election is made.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold the information we have marked under section 552.1175 if the individual to whom this information pertains is currently a commissioned security officer and elects to restrict access to her information in accordance with section 552.1175(b) of the Government Code. The city must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.<sup>3</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>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).

<sup>3</sup>We note the requestor has a right of access beyond that of the general public to some of the information being released that pertains to his client. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the city receives another request for this information from an individual other than this requestor or his client, the city must again seek a ruling from this office.

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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 546214

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ruiz Protective Services, Inc.  
5530 East Paisano  
El Paso, Texas 79905  
(w/o enclosures)