



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2015

Mr. Stephen D. Gates
Assistant City Attorney
City Of Midland
P.O. Box 1152
Midland, Texas 79701

OR2015-14971

Dear Mr. Gates:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. We assigned your request ID# 573766 and you assigned the requests for information, ID#s 16685, 16686, 16693, 16710, and 16708.

The City of Midland (the "city") received five requests for information related to a certain incident. You state the city has released portions of the responsive information to the requestors. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by an interested party. *See* Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts "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 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).

Upon review, we find the information the city marked in Exhibit B and the information the city specified for Exhibit D satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, we find the information in Exhibit C is not highly intimate or embarrassing information of no legitimate public interest. Accordingly, the city may not withhold Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy.

However, section 552.023(b) of the Government Code states a governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the ground that the information is considered confidential by privacy principles. Gov't Code § 552.023(b); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). The requestor for Midland ID#16710 may be the authorized representative of the individual whose privacy is implicated by the release of the private information in Exhibits B and D. Thus, if the city determines the requestor for Midland ID#16710 is the authorized representative of the individual whose privacy is implicated by the release of the private information in Exhibits B and D, the city may not withhold such information from that requestor.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes. The submitted information contains a Firearms Trace Summary that was provided to the city by the National Trace Center of the Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives (the "ATF"). Public Law number 112-55 states, in pertinent part,

[D]uring the current fiscal year and in each fiscal year thereafter, no funds appropriated under [the Consolidated and Further Continuing Appropriations Act, 2012] or any other [a]ct may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the [ATF] or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section, except to: (1) a Federal, State, local, or tribal law enforcement agency, or a Federal, State, or local prosecutor . . . unless such disclosure of such data to an[] . . . entit[y] described in (1) . . . of this proviso would compromise the identity of any undercover law enforcement officer or confidential informant, or interfere with any case under investigation; and no person or entity described in (1) . . . shall knowingly and publicly disclose such data; and all such data shall be immune from legal process, shall not be subject to subpoena or other

discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based on the data, in a civil action in any State[.]

Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011). We understand the Firearms Trace Summary contains content from the Firearms Trace System database maintained by the National Trace Center. Upon review, we find the Firearms Trace Summary we have marked is confidential under Public Law number 112-55. *See Miller v. U.S. Dep't of Justice*, 562 F. Supp. 2d 82, 111 (D.D.C. 2008) (holding Firearms Trace Report properly withheld under Freedom of Information Act exemption 3, which covers records that are exempt from disclosure by statute). Accordingly, the city must withhold the Firearms Trace Summary under section 552.101 of the Government Code in conjunction with Public Law number 112-55.¹

You assert Exhibit E is protected from disclosure under section 418.182(a) of the Government Code. Section 418.182(a) provides:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Gov't Code § 418.182(a). The fact information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state Exhibit E contains information that relates to the specifications, operating procedures, or location of a security system used to protect private property. You explain a gun store that offers for sale a large number of weapons and suppressors is on the private

¹You suggest that, under section 411.192(b) of the Government Code, the Firearms Trace Summary is subject to disclosure to the requestor for Midland ID# 16708. However, section 411.192 applies to concealed handgun license information maintained by or obtained from the Texas Department of Public Safety concerning the licensure of individuals to carry a concealed handgun. Gov't Code § 411.192(a). Thus, the firearms trace summary is not subject to section 411.192 and, therefore, is not subject to required disclosure to the requestor for Midland ID# 16708.

property where the security system is located. You state the security system is used to protect the property from acts of theft, vandalism, terrorism, and related criminal activity. Based on your representations and our review, we conclude Exhibit E is related to the specifications, operating procedures, or location of a security system used to protect private property from an act of terrorism or related criminal activity. Accordingly, the city must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, 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 release.² *See id.* § 552.130(a). We have marked the motor vehicle record information that is subject to section 552.130(a) of the Government Code. The city must withhold the marked information under section 552.130. However, as stated above, section 552.023(b) of the Government Code states a governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the ground that the information is considered confidential by privacy principles. Gov't Code § 552.023(b). Section 552.130 protects the privacy interest of the individual whose motor vehicle record information is at issue. Thus, the requestor for Midland ID# 16708 has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. In addition, if the city determines the requestor for Midland ID#16710 is the authorized representative of the individual listed in the report as suspect one, the city may not withhold from that requestor suspect one's motor vehicle information.

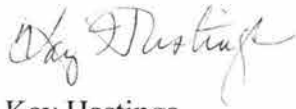
In summary, the city must withhold the information you marked and specified in Exhibits B and D based on section 552.101 of the Government Code in conjunction with common-law privacy, except to the extent such information is subject to disclosure under section 552.023 of the Government Code. The city must withhold the Firearms Trace Summary under section 552.101 of the Government Code in conjunction with Public Law number 112-55. The city must withhold Exhibit E based on section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The city must withhold the information we marked under section 552.130(a) of the Government Code, except to the extent the information is subject to disclosure under section 552.023. 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.

²The Office of the Attorney General will raise mandatory exceptions like section 552.130 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 573766

Enc. Submitted information

c: Requestors and third party
(w/o enclosures)