



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 13, 2020

Ms. Sarah Riffel  
Assistant City Attorney  
City of Odessa  
P.O. Box 4398  
Odessa, Texas 79760-4398

OR2020-25762

Dear Ms. Harden:

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# 850018 (City ID# P003625-070220).

The City of Odessa (the "city") received a request for basic information pertaining to a specified type of investigation from a specified time period.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. Additionally, you provide documentation showing the city notified the Texas Department of Public Safety (the "department") of the right to submit comments to this office why some of the submitted information should not be released.<sup>2</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is not responsive to the request because it does not consist of the requested basic information. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release such information in response to this request.

---

<sup>1</sup> As you have not submitted a copy of the request for information, we take our description from your brief. The city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

<sup>2</sup> As of the date of this letter, we have not received comments from the department.

Next, we must address the procedural obligations of the city under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving a request a copy of the written request for information. *See id.* § 552.301(e)(1)(B). The city informs us it received the request for information on July 6, 2020. However, as of the date of this ruling, the city has not submitted to this office a copy of the request. Therefore, the city failed to comply with section 552.301(e).

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 that 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). Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the information at issue.<sup>3</sup> However, we find the city has failed to establish a compelling reason to address section 552.108 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.” Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. However, we find the city has not demonstrated any of the responsive information is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the responsive information under section 552.101 in conjunction with common-law privacy.

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. *See* Gov't Code § 552.130. The city must withhold the information we marked under section 552.130 of the Government Code. The city must release the remaining responsive 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.

---

<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/mo

Ref: ID# 850018

Enc. Submitted documents

c: Requestor  
(w/o enclosures)