



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2009

Ms. Martha T. Williams
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2009-06727

Dear Ms. Williams:

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# 343414.

The City of Humble (the "city"), which you represent, received a request for information related to a specified incident, including a copy of police procedures. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you did not submit information responsive to the portion of the request for police procedures. We assume the city has released this information to the requestor. If it has not, it must do so at this time to the extent that such information exists. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that (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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

Generally, only the 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, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. Open Records Decision No. 393 at 2 (1983); *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 legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the submitted report relates to an alleged sexual assault and the requestor knows the identity of the alleged victim. Thus, withholding only the identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, the submitted report would ordinarily be withheld in its entirety under section 552.101 in conjunction with common-law privacy.

However, we note that the requestor is an attorney and the parent of the adult individual whose privacy interests are at issue within the submitted report. Thus, if the requestor is acting as the individual's authorized representative, then he has a right of access to the submitted information pursuant to section 552.023 of the Government Code, and it may not be withheld pursuant to common-law privacy. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). If the requestor is not acting as the individual's authorized representative, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent that the requestor is the authorized representative of the individual at issue, we will address the city's argument under section 552.130 of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree

that the city must withhold the yellow-highlighted Texas driver's license information under section 552.130.

Finally, we note that the submitted information contains information acquired from a polygraph examination. Section 1703.306(a) of the Occupations Code provides that "[a] polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]"¹ Occ. Code § 1703.306(a). It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, we conclude the city must withhold the information acquired from a polygraph examination, which we have marked, under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

In summary, if the requestor is not acting as the authorized representative of the individual whose privacy is at issue, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the individual's authorized representative, then the city must withhold the Texas driver's license number you have marked under section 552.130 of the Government Code and the information acquired from a polygraph examination, which we have marked, under section 552.101 in conjunction with section 1703.306 of the Occupations Code, but must release the remaining information to the requestor.² We note that because the requestor has a special right of access to the released information in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

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.oag.state.tx.us/open/index_orl.php, 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

¹Section 552.101 also encompasses information protected by other statutes.

²We note the remaining information contains a social security number. 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 under the Act. Gov't Code § 552.147. However, if the requestor is the authorized representative of this individual, he has a right of access to the individual's social security number and it must be released to him. *See generally id.* § 552.023(b).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 343414

Enc. Submitted documents

c: Requestor
(w/o enclosures)
