



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 6, 2010

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2010-06536

Dear Ms. Sangsvang:

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# 378503 (PIR No. 2357-10).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release 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 (Tex. 1976). The type of information considered intimate or 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 highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as

the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy.

In this instance, the request for information reveals that the requestor knows the identity of the individual involved as well as the nature of the submitted information. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. We note, however, that the requestor is the spouse of the individual to whom the submitted information pertains and may have a right of access to this information. *See* Gov't Code § 552.023(b) ("person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Thus, if the requestor is acting as the authorized representative of his spouse, then he has a right of access to the submitted information pursuant to section 552.023(b), and this information may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of his spouse, 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.

You state you have redacted Texas driver's license numbers from the submitted information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). However, we note that section 552.130 protects privacy interests. Thus, if the requestor is acting as the authorized representative of his spouse, then he has a right of access to her redacted driver's license number pursuant to section 552.023(b), and it may not be withheld from him under section 552.130. The city must withhold the remaining driver's license number under section 552.130.

In summary, if the requestor is acting as the authorized representative of his spouse, then the city must withhold the driver's license number pertaining to an individual other than the requestor's spouse under section 552.130 of the Government Code and release the remaining information.¹ If the requestor is not acting as the authorized representative of his spouse, 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.

¹We note this information contains confidential information to which the requestor may have a right of access. *See* Gov't Code § 552.023(a); 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). Thus, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,


Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 378503

Enc. Submitted documents

c: Requestor
(w/o enclosures)