



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2010

Mr. Clark McCoy
Wolfe, Tidwell & McCoy, L.L.P.
Attorneys for the City of Anna
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2010-11855

Dear Mr. McCoy:

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#389440.

The Anna Police Department (the "department"), which you represent, received a request for information pertaining to an automobile accident, including the accident report, scene photographs, and the written statement of a witness to the accident. You state you are releasing some of the requested information with redactions pursuant to Open Records Decision No. 684 (2009) and section 552.147 of the Government Code.¹ You claim that 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.

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

¹We note that Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision. In addition, 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.

Code § 552.101. Section 552.101 encompasses the common-law right of 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. *See id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Common-law privacy also protects the identities of victims and witnesses in an investigation of alleged sexual harassment in the workplace. *See 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 a legitimate interest in such information). Although you argue the victims and witnesses' identities you have marked are protected under common-law privacy, we note the submitted information pertains to an automobile accident rather than a sexual harassment investigation. Further, the submitted victim and witness information is neither highly intimate or embarrassing. However, we do find that portions of the information at issue are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state."² Gov't Code § 552.130(a). We have marked the motor vehicle record information that is subject to section 552.130 of the Government Code. We note, however, the requestor in this instance is the insurance provider for one of individuals listed in the submitted information. As such, this requestor, if acting as the individual's authorized representative, has a right of access to his insured's marked Texas motor vehicle record information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear that the requestor is acting as the individual's authorized representative. Therefore, we must rule conditionally. To the extent the requestor has a right of access under section 552.023 to his insured's Texas motor vehicle record information, the department must release this information to the requestor. To the extent this

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

requestor does not have a right of access under section 552.023, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor is not acting as his insured's authorized representative, the department must withhold the insured's Texas motor vehicle record information, as well as the remaining Texas motor vehicle information we have marked, under section 552.130 of the Government Code. The remaining information must be released.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#389440

Enc. Submitted documents

c: Requestor
(w/o enclosures)