



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2010

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2010-14846

Dear Ms. Benton:

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# 395162 (Waco Ref. # LGL-10-960).

The City of Waco (the "city") received a request for all fire department and police records relating to a specified traffic accident. You claim portions of the submitted information are 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.

You claim a portion of the submitted information, which you have marked, is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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. This section incorporates the doctrine of common-law 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types 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. In addition, this office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree that the information you have marked is highly intimate or embarrassing and of no legitimate public concern. The city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We understand you to assert that portions of the remaining information are excepted under section 552.130 of the Government Code, which 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 find the Texas motor vehicle record information we have marked is subject to section 552.130 of the Government Code.¹ However, the remaining information you have marked does not consist of Texas motor vehicle record information and, thus, may not be withheld under section 552.130. We note, however, the requestor is the daughter of one of the individual's whose Texas motor vehicle record information is at issue and may be acting as her father's authorized representative. As such, this requestor, if acting as her father's authorized representative, has a right of access to the motor vehicle record information relating to her father. *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 whether the requestor is acting as her father's authorized representative. Therefore, we must rule conditionally. To the extent the requestor has a right of access under section 552.023 to her father's information, the city must release that information to this requestor and withhold the remaining information we have marked under section 552.130. To the extent this requestor does not have a right of access under section 552.023, the city must withhold all the information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor has a right of access under section 552.023 to her father's information, the city must release that information to this requestor and withhold the remaining information we have marked under section 552.130. To the extent this requestor does not have a right of access under section 552.023, the city must withhold all the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 395162

Enc. Submitted documents

c: Requestor
(w/o enclosures)