



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2010

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

OR2010-19241

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# 403808 (Fort Worth PIR No. W004147).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. You claim 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 Code § 552.101. You raise section 552.101 in conjunction with common-law privacy, which protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of this test must be established. *Id.* at 681-82. 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. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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).

Upon review, we conclude the information we marked is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy. The requestor states he has a "power of attorney" for the subject whose information is at issue. Section 552.023 of the Government Code gives a person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to person to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is in fact acting as the authorized representative of the individual whose information is at issue, then section 552.023 provides the requestor a special right of access to the information we marked. If the requestor is not acting as the authorized representative of the individual whose information is at issue, the city must withhold the information we marked under section 552.101 in conjunction with common-law privacy. However, we find the remaining information you marked is not highly intimate or embarrassing. Consequently, in either case, the city may not withhold any of the remaining information under section 552.101 on the basis of common-law privacy.

You state you have redacted Texas driver's license numbers, except for the requestor's own Texas driver's license number, under section 552.130 of the Government Code pursuant to the previous determination issued to the city in Open Records Letter No. 2006-14726 (2006). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Section 552.130 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[.]" Gov't Code § 552.130(a)(1). Upon review, we agree the driver's license numbers you marked are subject to section 552.130. However, the requestor may be the authorized representative of his spouse and the individual for whom he claims to have a power of attorney. Accordingly, the requestor may have a right of access to these individuals' Texas driver's license numbers under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, if the requestor is the authorized representative of these individuals, then their Texas driver's license numbers may not be withheld from this requestor under section 552.130. If the requestor is not the authorized representative of these individuals, then the Texas driver's license numbers at issue must be withheld under section 552.130 pursuant to Open Records Letter No. 2006-14726. In either case, the city must withhold the remaining Texas driver's license number you redacted.

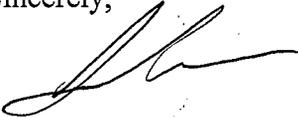
In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy if the requestor is not acting as the authorized representative of the individual whose information is at issue. The city must generally withhold the information you redacted under section 552.130 of the Government

Code; however, if the requestor is acting as the authorized representative of his spouse and the individual for whom he claims to have a power of attorney, the city may only withhold the Texas driver's license number pertaining to the other individual under section 552.130.¹ In either case, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 403808

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹In this case, should the city receive another request for these same records from a person who would not have a right of access, the city should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.