



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 29, 2011

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2011-04275

Dear Ms. Quinn:

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# 412977 (Cedar Park reference number 11-240).

The City of Cedar Park (the "city") received a request for information related to a specified incident. You state the city has provided basic information to the requestor.¹ You state the city will redact a driver's license number pursuant to Open Records Decision No. 684 (2009) and a social security number under section 552.147 of the Government Code.² You claim the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses the doctrine of common-law privacy, which

¹Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976).

²This office has issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Section 552.147 of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

protects information if it (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 established. *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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from 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). Upon review, we agree the information you have marked in Exhibit B under common-law privacy is highly intimate or embarrassing information that is of no legitimate public concern. Accordingly, the city must withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than a conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2-3 (1986). You state, and provide documentation showing, the information submitted as Exhibit C relates to an investigation that has concluded and did not result in a conviction or deferred adjudication. Based on this representation and our review, we conclude the city may withhold the information submitted as Exhibit C under section 552.108(a)(2) of the Government Code.

In summary, the city must withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the information submitted as Exhibit C under section 552.108(a)(2) of the Government Code. The remaining information must be released.³

³We note the requestor has a right of access to her own driver's license number and social security number, which are being released in this instance. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Should the city receive another request for the same information from a different requestor, the city may redact the driver's license number pursuant to Open Records Decision No. 684 and the social security number under section 552.147(b) of the Government Code without requesting a decision from our 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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 412977

Enc. Submitted documents

c: Requestor
(w/o enclosures)