



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2011

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

OR2011-09844

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# 423647 (Reference Number 11-388).

The City of Cedar Park (the "city") received a request for two specified police reports. You claim that the submitted 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 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 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). 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 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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain

incidents, the information must be withheld in its entirety to protect the individual's privacy. In this instance, the submitted information reflects the requestor knows the identity of the individual involved as well as the nature of the information in Exhibit C. 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. Accordingly, we agree that Exhibit C must generally be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Although you also seek to withhold Exhibit B in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. We find that portions of Exhibit B are highly intimate or embarrassing and not of legitimate public concern. Thus, the city must generally withhold the information we have marked in Exhibit B pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information in Exhibit B either is not intimate or embarrassing or is of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In this instance, however, the requestor may be the authorized representative of the individual whose privacy is at issue. Section 552.023 of the Government Code provides "[a] 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." *See Gov't Code* § 552.023(a); *see also id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning the individual). Thus, if this requestor is acting as the subject individual's authorized representative, this requestor has a right of access to information pertaining to that individual that would ordinarily be excepted from disclosure under section 552.101 in conjunction with common-law privacy. Therefore, if the requestor is acting as the authorized representative of the individual whose private information is at issue, the city may not withhold the information at issue from this requestor on the basis of common-law privacy. Otherwise, the city must withhold Exhibit C in its entirety and the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release.¹ Act of May 24, 2011, 82nd Leg.,

¹The 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).

R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). As previously noted, the requestor in this instance may be the authorized representative of the individual whose Texas driver's license number is at issue in the submitted information. Accordingly, if the requestor is acting as this individual's authorized representative, this requestor has a right of access to the Texas driver's license number is at issue, and it may not be withheld from him under section 552.130. *See* Gov't Code § 552.023(a). However, if the requestor is not the individual's authorized representative, the city must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.²

In summary, if the requestor is not the individual's authorized representative, the city must (1) withhold Exhibit C in its entirety and the information we have marked in Exhibit B pursuant to section 552.101 of the Government Code in conjunction with common-law privacy, (2) withhold the Texas driver's license number we have marked under section 552.130 of the Government Code, and (3) release the remaining information. If the requestor is the individual's authorized representative, the submitted information must be released in its entirety.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold a Texas driver's license number under section 552.130 without the necessity of requesting an attorney general decision.

Ref: ID# 423647

Enc. Submitted documents

c: Requestor
(w/o enclosures)