



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2011

Mr. B. Chase Griffith
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-11100

Dear Mr. Griffith:

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# 426112 (ORR# 10-3797).

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to two specified case numbers. You state you have released information pertaining to one of the requested case numbers. 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. This section encompasses 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 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. 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). Upon review, we find some of the submitted information is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the department must generally withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find that you have failed to demonstrate that the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, the requestor is the spouse of the individual whose right to privacy is involved, and, thus, may be acting as the individual's authorized representative. As his spouse's authorized representative, the requestor would have a right of access under section 552.023 of the Government Code to any information the department would be required to withhold from the public to protect his spouse's privacy. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Thus, if the requestor is acting as his spouse's authorized representative, then the information we have marked may not be withheld from this requestor on privacy grounds under section 552.101. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is not acting as his spouse's authorized representative, then the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note the remaining information contains information that is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country.¹ Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We note the information at issue may pertain to the requestor or his spouse. Section 552.130 is based on privacy principles. Therefore, to the extent the Texas motor vehicle record information we have marked belongs to the requestor or the requestor's spouse, if the requestor is acting as her authorized representative, the requestor has a right of access to this information under section 552.023 of the Government Code, and the department may not withhold this information from the requestor on this basis. *See* Gov't Code § 552.023(a)-(b); ORD 481 at 4. To the extent the requestor does not have

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).

a right of access to the Texas motor vehicle record information we have marked, the department must withhold this information under section 552.130 of the Government Code.²

In summary, if the requestor is not acting as his spouse's authorized representative, then 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 does not have a right of access to the Texas motor vehicle record information we have marked, the department must withhold this information 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 426112

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.