



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2011

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-12217

Dear Mr. Wallach:

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# 428499 (Fort Worth No. W009506).

The City of Fort Worth (the "city") received a request for two specified incident reports. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 common-law right to privacy, which 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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *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 that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy. In this instance, report number 11-43232 reveals the requestor knows the identity of the individual involved as well as the nature of the report. 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, to protect the privacy of the individual to whom the information relates, the city must generally withhold report number 11-43232, which we have marked, in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, as to report number 11-43365, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entire report must be withheld on the basis of common-law privacy. Therefore, report number 11-43365 may not be withheld in its entirety under section 552.101 in conjunction with common-law privacy. However, upon review, we find some information in that report, which we have marked, is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city must generally withhold the information we have marked in report number 11-43365 under section 552.101 in conjunction with common-law privacy.

However, we note the requestor is the spouse of the individual to whom the submitted reports pertain and may be acting as her authorized representative. As such, the requestor may have a right of access to the information at issue under section 552.023 of the Government Code, which provides in part that "[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." Gov't Code § 552.023(a). Thus, because section 552.101 in conjunction with common-law privacy protects personal privacy, the city may not withhold the submitted information from the individual at issue or her authorized representative on that basis. Therefore, if the requestor is acting as the authorized representative of his spouse, then he has a right of access to the marked information pursuant to section 552.023(b), and it may not be withheld from him under section 552.101 in conjunction with common-law privacy. However, if the requestor is not acting as the authorized representative of his spouse, then the city must withhold report number 11-43232 in its entirety and the information we have marked in report number 11-43365 under section 552.101 in conjunction with common-law privacy.

You state you have redacted a driver's license number belonging to the requestor's spouse under section 552.130 of the Government Code pursuant to a previous determination issued to the city in Open Records Letter No. 2006-14726 (2006). *Id.* § 552.301(a); Open Records

Decision No. 673 at 7-8 (2001). You also state you have redacted the requestor's spouse's social security number under section 552.147 of the Government Code. *See id.* § 552.147(b) (permitting a governmental body to redact a living person's social security number without the necessity of requesting an attorney general decision under the Act). However, sections 552.130 and 552.147 protect personal privacy, and, as noted, the requestor is the spouse of the individual whose privacy is at issue. Thus, if he is acting as his spouse's authorized representative, he has a right of access to this information marked in both reports pursuant to section 552.023 of the Government Code, and it may not be withheld from him under section 552.130 or section 552.147. If he is not acting as his spouse's authorized representative, the city must withhold the information you have marked in report number 11-43365 under section 552.130 and may withhold the marked social security number under section 552.147.

In summary, if the requestor is not acting as his spouse's authorized representative, the city (1) must withhold report number 11-43232 in its entirety and the information we have marked in report number 11-43365 under section 552.101 of the Government Code in conjunction with common-law privacy, (2) must withhold the information you have marked in report number 11-43365 under section 552.130, and (3) may withhold the information you have marked in report number 11-43365 under section 552.147. The remaining information must be released. If, however, the requestor is acting as his spouse's authorized representative, the city must release the submitted reports to him in their 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 428499

Enc. Submitted documents

c: Requestor
(w/o enclosures)