



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 20, 2011

Ms. Linda M. Champion  
Assistant City Attorney  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR2011-13597

Dear Ms. Champion:

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# 430506.

The City of Victoria (the "city") received a request for information pertaining to a specified case number. You claim 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 information made confidential by other statutes, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. See Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides, in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). Although you assert the submitted information may be withheld pursuant to the MPA, we find you have failed to demonstrate how the submitted information consists of a physician-patient communication or a record of the identity, diagnosis, evaluation, or treatment of a patient that was created or maintained by a physician. *See id.* § 159.002(a), (b). Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also 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). 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. In this instance, however, because you copied the requestor on your brief to this office, and your brief reveals the nature of the incident at issue in the specified case number, the requestor now knows the nature of the incident at issue in the specified case number. Therefore, withholding only certain details of this incident from the requestor would not preserve the privacy interests of the individual at issue in the specified case number. Accordingly, to protect the privacy of the individual to whom the submitted information relates, we determine that the city must withhold the identifying information we have marked in the submitted information under section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not 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.

We note the remaining information contains information subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;

(2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]

Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(1)-(2)). Upon review, we find the city must withhold the information we have marked in the remaining information under section 552.130 of the Government Code.

In summary, the city must withhold the identifying information we have marked under section 552.101 in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining information.

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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/agn

Ref: ID# 430506

Enc. Submitted documents

c: Requestor  
(w/o enclosures)