



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2011

Mr. Benjamin Sampract
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-15365

Dear Mr. Sampract:

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# 433648 (PIR No. W010717).

The City of Fort Worth (the "city") received a request for two specified police reports. You state the city has redacted certain Texas issued motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).¹ *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). 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.

¹Open Records Letter Nos. 2006-14726 and 2007-00198 are previous determinations to the city authorizing the city to withhold certain motor vehicle record information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercedes Open Records Letter Nos. 2006-14726 and 2007-00198 on September 1, 2011. Therefore, the city may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Letter Nos. 2006-14726 and 2007-00198.

Section 552.101 of the Government Code exempts 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 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. *See 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. Generally, only highly intimate information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, an entire report must be withheld to protect the individual’s privacy.

You seek to withhold the submitted information, which consists of reports 11-77438 and 11-77472, in its entirety under common-law privacy. In this instance, the requestor knows the identity of the individual and the nature of the incident involved in report 11-77438. Thus, we agree this report must be withheld in its entirety under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, and the submitted information does not reflect, a situation in which report 11-77472 must be withheld in its entirety on the basis of common-law privacy. Upon review, we have marked the information contained in report 11-77472 that is highly intimate or embarrassing and not of legitimate public interest. Accordingly, this information also must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. 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(a)(1)-(2)). Upon review, we have marked the information in report 11-77472 that must be withheld under section 552.130.

In summary, the city must withhold report 11-77438 and the information we marked in report 11-77472 under section 552.101 of the Government Code in conjunction with common-law privacy. The city also must withhold the information we marked in report 11-77472 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,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal stroke extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 433648

Enc. Submitted documents

c: Requestor
(w/o enclosures)