



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2012

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2012-02082

Dear Ms. Sangsvang:

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# 444938 (PIR# W013276).

The City of Fort Worth (the "city") received a request for a specified report involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

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 doctrine of common-law 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 established. *Id.* at 681–82. The type of information considered highly 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. Upon review, we agree the information you have marked is generally confidential under common-law privacy.

We note the requestor has submitted to our office a durable power of attorney (“POA”) purporting to designate the requestor as the authorized representative of the person whose information is at issue. However, we are unable to determine if the information you have marked falls under one of the categories of information to which POA applies. Therefore, we must rule conditionally. If the city determines the POA authorizes the requestor to receive this information, then the city may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, if the city determines the POA does not authorize the requestor to receive this information, then the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have also redacted certain motor vehicle record information, which is subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit, or a motor vehicle title or registration, issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1), (2). We note section 552.130 is based on privacy principles. Thus, as previously noted, the requestor might have a right of access to the motor vehicle record information you have redacted. *See id.* §552.023(b). If the city determines the POA authorizes the requestor to receive this information, the city may not withhold it under section 552.130 of the Government Code. However, if the city determines the POA does not authorize the requestor to receive this information, the city must withhold it under section 552.130 of the Government Code.

In summary, if the city determines the POA authorizes the requestor to receive this information, then the city may not withhold the information you have marked under sections 552.101 and 552.130 of the Government Code. However, if the city determines the POA does not authorize the requestor to receive this information, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction

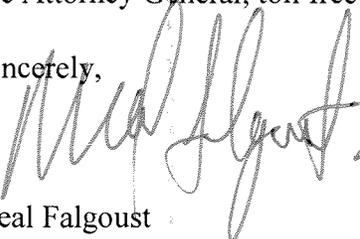
¹We note this office has issued Open Records Decision No. 684, which permits a governmental body to redact a Texas license plate number under section 552.130 of the Government Code without the necessity of requesting a decision from this office. *See* Open Records Decision No. 684 (2009). We further note section 552.130 of the Government Code authorizes a governmental body to redact information subject to subsections 552.130(a)(1) and 552.130(a)(3) without requesting a decision from this office. *See* Gov’t Code § 552.130(c).

with common-law privacy and the information you have redacted 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/agn

Ref: ID# 444938

Enc. Submitted documents

c: Requestor
(w/o enclosures)