



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 5, 2012

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

OR2012-03252

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# 447590 (PIR No. W013766).

The City of Fort Worth (the "city") received a request for incident report 11-15226. You have marked a social security number for redaction pursuant to section 552.147 of the Government Code.<sup>1</sup> 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.

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. *See 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* include 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. *See id.* at 683.

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

The submitted information related to an alleged attempted sexual assault. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 393 at 2; 339 (1982), 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the request for information reveals that the requestor knows the identity of the alleged victim at issue. Thus, withholding only the alleged victim's identifying information from the requestor would not preserve the alleged victim's common-law right to privacy. However, we note the requestor may be the alleged victim's authorized representative. Section 552.023 of the Government Code states a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). Accordingly, if the requestor is not the alleged victim's authorized representative, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the city determines the requestor is the alleged victim's authorized representative, then the requestor has a right of access to information pertaining to her client that would ordinarily be withheld to protect the alleged victim's privacy interests, and none of the submitted information may be withheld from the requestor under section 552.101 in conjunction with common-law privacy. In that case, we address your remaining arguments under section 552.101 and 552.130 of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* Open Records Decision No. 565 at 7 (1990); *see also generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or

another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with subchapter F of chapter 411. You assert that a portion of the submitted information is subject to chapter 411. Upon review, agree the information you have highlighted constitutes CHRI for purposes of chapter 411. Thus, the city must withhold this information under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code and federal law.

You have marked two driver's license numbers under section 552.130 of the Government Code. Section 552.130(a)(1) provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. *See id.* § 552.130(a)(1). Upon review, we have marked a driver's license number that must be withheld under section 552.130 of the Government Code. We note, however, that the remaining driver's license number you have marked belongs to the alleged victim at issue. Section 552.130 protects personal privacy. Thus, the requestor would have a right of access to this information under section 552.023 as the alleged victim's authorized representative. *See id.* § 552.023; ORD 481 at 4.

In summary, if the requestor is not the alleged victim's authorized representative, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the city determines the requestor is the alleged victim's authorized representative, none of the submitted information may be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. In that case, the city must withhold the information you have highlighted under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code and federal law, and the driver's license number we have marked under section 552.130 of the Government Code, and must release the remaining information.<sup>2</sup>

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

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<sup>2</sup>We note the information being released contains confidential information to which the requestor has a right of access. *See Gov't Code* § 552.023; ORD 481. If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

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 flourish extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/dls

Ref: ID# 447590

Enc. Submitted documents

c: Requestor  
(w/o enclosures)