



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2012

Ms. Linda Hight
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033

OR2012-05546

Dear Ms. Hight:

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# 450951.

The City of Cleburne (the "city") received a request for information pertaining to specified incidents. You claim that the requested 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. 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). You argue the submitted information should be withheld in its entirety under section 552.101 in conjunction with common-law privacy. The submitted information pertains to alleged sexual assaults. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold all of the information at issue when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. Although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does the information reflect, the requestor knows the identities of the

alleged sexual assault victims. Thus, the city may not withhold the submitted information in its entirety under common-law privacy. Upon review, we note the alleged victim in Exhibit 3 is identified only by a pseudonym. We find the use of a pseudonym sufficiently protects this victim's identity. Furthermore, we find the information we have marked in Exhibit 2 is highly intimate or embarrassing and not of legitimate public concern. Thus, we determine the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is private or is of legitimate public interest; therefore, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. We have marked information acquired from a polygraph examination that is confidential under section 552.101 in conjunction with section 1703.306. In this instance, the requestor may be the authorized representative of the individual whose polygraph information is at issue. Thus, if the requestor is acting as the authorized representative of the polygraph examinee, the city has the discretion to release the marked information to this requestor pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country.¹ Gov't Code § 552.130(a)(1). We have marked the information that is subject to section 552.130. We note section 552.130 protects personal privacy. As previously noted, the requestor may be acting as the authorized representative of the individual whose driver's license information is at issue. Accordingly, if the requestor is acting as this individual's authorized representative, she has a right of access to his driver's license information under section 552.023 of the Government Code, and the city may not withhold it from her under section 552.130. *See id.* § 552.023(b). If the requestor is not

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

acting as this individual's authorized representative, the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked information acquired from a polygraph examination that is confidential under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. If the requestor is acting as the authorized representative of the polygraph examinee, the city has the discretion to release the marked information to this requestor pursuant to section 1703.306(a)(1). The city must withhold the information we have marked under section 552.130 of the Government Code, unless the requestor is this individual's authorized representative. The city must release the remaining information.²

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

²We note the information being released includes a social security number. 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. Gov't Code § 552.147(b). However, as previously noted, the requestor may be the authorized representative of the individual at issue. Because section 552.147 protects personal privacy, the requestor may have a right of access to his social security number under section 552.023 of the Government Code. *See id.* § 552.023(a). Therefore, if the requestor is his authorized representative, then the social security number must be released to the requestor. If the requestor is not his authorized representative, this social security number may be withheld under section 552.147.

Ref: ID# 450951

Enc. Submitted documents

c: Requestor
(w/o enclosures)