



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2012

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

OR2012-06056

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# 452271 (PIR# W014745).

The City of Fort Worth (the "city") received a request for a specified incident report. 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. This section encompasses the common-law right to 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. *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 met. *See id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows

the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy. In this instance, you have not demonstrated, nor does it otherwise appear, this is a situation in which the submitted information must be withheld in its entirety on the basis of common-law privacy. However, upon review, we agree that portions of this information are highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate, however, how the remaining information it has highlighted is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

However, we note the requestor is the spouse of the individual to whom the submitted information pertains and may be acting as her authorized representative. As such, the requestor may have a right of access to the information at issue under section 552.023 of the Government Code, which provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Thus, because common-law privacy protects personal privacy, the city may not withhold the information we have marked from the individual at issue or her authorized representative on that basis. Therefore, if the requestor is acting as his spouse's authorized representative, he has a right of access to this information pursuant to section 552.023(a), and it may not be withheld from him under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not acting as his spouse's authorized representative, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

You state the city has redacted a driver's license number pursuant to section 552.130(c) of the Government Code.<sup>1</sup> Section 552.130(a)(1) of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(1). We find the city must generally withhold the driver's license number you have marked under section 552.130 of the Government Code. However, we note this information belongs to the requestor's spouse. Section 552.130 also protects personal privacy. Therefore, as noted above, the requestor may have a right of access to his spouse's

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<sup>1</sup>The Texas legislature amended section 552.130 of the Government Code effective September 1, 2011, to allow a governmental body to redact the information described in subsections 552.130(a)(1) without the necessity of seeking a decision from the attorney general. *See* 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 id.* § 552.130(d), (e).

driver's license number as her authorized representative. *See id.* § 552.023(a); ORD 481 at 4. Thus, if the requestor has a right of access to the driver's license number you have marked, the city may not withhold this information from this requestor. Conversely, if the requestor does not have a right of access to the marked driver's license number, the city must withhold it under section 552.130(a)(1) of the Government Code.

In summary, if the requestor is not acting as his spouse's authorized representative, then the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the drivers' license number you have marked under section 552.130(a)(1) of the Government Code. The remaining information must be released. If, however, the requestor is acting as his spouse's authorized representative, the city must release the submitted information to him in its entirety.<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 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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/dls

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<sup>2</sup>We note the information being released in this instance contains the requestor's driver's license number and social security number, to which the requestor has a right of access under section 552.023 of the Government Code. *See Gov't Code* §§ 552.023(a), .130; ORD 481 at 4. As previously noted, section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See 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 id.* § 552.130(d), (e). Additionally, 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 id.* § 552.147(b). Thus, if the city receives another request for this same information from a person who does not have such a right of access, sections 552.130(c) and 552.147(b) authorize the city to redact the requestor's driver's license information and social security number, respectively.

Ref: ID# 452271

Enc. Submitted documents

c: Requestor  
(w/o enclosures)