



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2012

Ms. Cara Leahy White
Counsel for the City of Euless
Taylor Olson Adkins Sralla Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2012-12223

Dear Ms. White:

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# 461501.

The Euless Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You state the department is withholding certain information pursuant to Open Records Decision No. 684 (2009).¹ 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. The type of information considered intimate and

¹Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision.

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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must generally withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

In this instance, however, the submitted information reveals the requestor is the spouse of the individual whose privacy interests are at issue. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to information pertaining to her spouse that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of her spouse, then the department may not withhold any portion of the marked information from this requestor under section 552.101 on the basis of common-law privacy. If the requestor is not acting as the authorized representative of her spouse, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

You state the department will withhold information pursuant to section 552.130(c) of the Government Code. *See* Gov't Code § 552.130(c) (governmental body may redact information described in subsections 552.130(a)(1) and (a)(3) without necessity of seeking a decision from the attorney general and must notify requestor in accordance with section 552.130(e)). Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we agree portions of the submitted information consist of motor vehicle record information. We note section 552.130 protects personal privacy. As noted above, the requestor may be acting as the authorized representative of the individual whose motor vehicle record information is at issue. Accordingly, if the requestor is acting as her spouse's authorized representative, then the requestor has a right of access to her spouse's driver's license number under section 552.023 of the Government Code and

it may not be withheld from her under section 552.130. *See id.* § 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); ORD 481 at 4. However, if the requestor is not acting as her spouse's authorized representative, the department must withhold the driver's license number you have marked under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of her spouse, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the driver's license number you have marked under section 552.130 of the Government Code. In that instance, the department must release the remaining information. If the requestor is acting as the authorized representative of her spouse, then the department must release the submitted information in its entirety.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 461501

Enc. Submitted documents

c: Requestor
(w/o enclosures)