ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2012

Ms. Andrea M. Gardner
City Manager
City of Copperas Cove
P.O. Box 1449
Copperas Cove, Texas 76522-5449

OR2012-14279

Dear Ms. Gardner:

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# 464538.

The City of Copperas Cove (the "city") received a request for information related to case number 10-0377. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You raise section 552.108(a)(1) of the Government Code for the submitted information, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information).

The submitted information pertains to an investigation by the city's police department (the "department"). You state the submitted information relates to a case that has been

"dismissed by the Coryell County District Court, but the case was transferred to Fort Hood Army Installation officials." You further state the city is "unaware if the case has been prosecuted by the Army." However, you have not provided our office with any representation to indicate the department or the Army wishes to withhold the information at issue. You have also not explained, and the information at issue does not reveal, how the submitted information pertains to an ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Therefore, the city may not withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."[1] Gov't Code § 552.101. Section 552.101 encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered 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. *See id.* at 683. This office has found that 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. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find a portion of the information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city must generally withhold the information we have marked in the submitted documents and indicated on the submitted video recordings pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor is the spouse of the individual whose privacy interests are at issue. Thus, the requestor may be the authorized representative of the individual whose privacy interests are at issue, and may have a right of access to information pertaining to that individual 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

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

when individual requests information concerning himself). Because we are unable to determine whether the requestor is the authorized representative of the individual whose privacy interests are at issue, we must rule conditionally. Accordingly, if the requestor is not acting as the authorized representative of the individual with the privacy interest, the city must withhold the marked and indicated information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the authorized representative of the individual whose privacy interests are at issue, the city may not withhold the marked and indicated information from this requestor.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to 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, however, that section 552.130 protects personal privacy, and one of the driver's license numbers you have marked belongs to the requestor. Accordingly, the requestor has a right of access to this information under section 552.023 of the Government Code, and the city may not withhold it in this instance. *See id.* § 552.023(b). We further note section 552.130 does not except a driver's license issuing state. Upon review, we find the city must withhold the information we have marked under section 552.130 of the Government Code. However, none of the remaining information at issue may be withheld under section 552.130.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147. You have marked social security numbers pursuant to section 552.147. However, we note one of the social security numbers you have marked belongs to the requestor. Section 552.147 protects personal privacy. As noted above, this requestor has a right of access to his own information that would otherwise be confidential under privacy principles. Therefore, the city may not withhold the requestor's social security number from him on this basis. *See id.* § 552.023. However, you may withhold the remaining social security numbers that do not belong to the requestor under section 552.147 of the Government Code.[2]

In summary, if the requestor is not acting as the authorized representative of the individual with the privacy interest, the city must withhold the information we have marked in the submitted documents and indicated in the submitted video recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. With the exception of the requestor's social security number, the city

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[2]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).

may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining information must be released.[3]

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,

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 464538

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[3]We note that the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.