



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2012

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2012-16932

Dear Mr. Weir:

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# 468790 (COSA File No. W009351).

The San Antonio Police Department (the "department") received a request for a specified police report concerning a named individual. You claim that 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. 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. Upon review, we find a portion of the information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must generally withhold the information we have marked in the submitted information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

However, we find none of the remaining information is highly intimate or embarrassing and the information is not of legitimate public concern. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the requestor may be the attorney and authorized representative of the individual whose privacy interest is at issue, and thus, 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 when individual requests information concerning herself). Because we are unable to determine whether the requestor is the authorized representative of the individual whose privacy interest is 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 department must withhold the marked 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 department may not withhold the marked information from this requestor.

Section 552.130 of the Government Code provides that 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.¹ Gov't Code § 552.130(a). Accordingly, the department must generally withhold the information we have marked under section 552.130. However, we note section 552.130 is based on privacy principles. As noted above, it is not clear whether the requestor is acting as the named individual's authorized representative. As such, this requestor may have a right of access to the named individual's information, and we must rule conditionally. *See id.* § 552.023; ORD 481 at 4. If the requestor does not have a right of access to this information, the department must withhold the information we marked under section 552.130 of the Government Code. Conversely, if the requestor has a right of access to the information at issue, the department may not withhold the information we have marked pertaining to the named individual from this requestor under section 552.130. In either event, the department must withhold the remaining driver's license number we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of the named individual, the department must withhold the information we have marked under

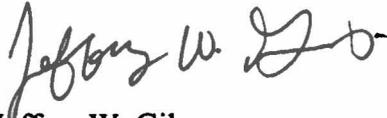
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.130 of the Government Code, and release the remaining information. Conversely, if the requestor is acting as the authorized representative of the named individual, the department must withhold the driver's license information not pertaining to the named individual under section 552.130 of the Government Code and release the remaining information.² The remaining information must be released.

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 468790

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note in this case the information being released contains the requestor's client's motor vehicle record information, to which the requestor has a right of access under section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.