



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2012

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2012-17353

Dear Mr. Bounds:

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# 469282 (CCPD File No. JTho1).

The Corpus Christi Police Department (the "department") received a request for the police report concerning a specified incident. You claim portions of the submitted information are 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 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 doctrine of common-law 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. *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 established. *Id.* at 681-82. The type of information considered highly 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. *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 some of the submitted information, which we have marked, is highly intimate or embarrassing and of no legitimate public interest. Accordingly, this information, which we have marked, must generally be withheld under 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 information is at issue and may be acting as the individual's authorized representative. If the requestor is the individual's authorized representative, then he has a right of access to the information that would ordinarily be withheld to protect the individual's privacy interests. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond that of general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect privacy interests). Thus, if the requestor is acting as the individual's authorized representative, the department may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. If the requestor is not the individual's authorized representative, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. We find none of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code on the basis of common-law privacy.

We note the department has redacted a driver's license number pursuant to section 552.130(c) of the Government Code.¹ 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 id.* § 552.130(a)(1). We find the department 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, the requestor may have a right of access to his spouse's 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 department 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 department must withhold it under section 552.130(a)(1) of the Government Code.

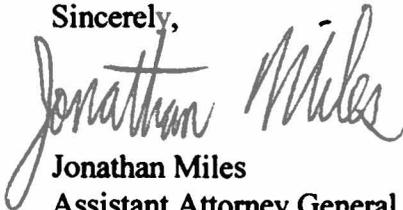
¹The Texas legislature amended section 552.130 of the Government Code effective September 1, 2011, to allow a governmental body to redact the information described in subsections 552.130(a)(1) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

In summary, if the requestor is not acting as the authorized representative of the individual with the privacy interest, then the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor does not have a right of access to the marked driver's license number, then the department must withhold it under section 552.130(a)(1) of the Government Code. 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 469282

Enc. Submitted documents

c: Requestor
(w/o enclosures)