



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2013

Mr. Ronald J. Bounds
Assistant City Attorney
Law Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-2977

OR2013-01293

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# 477137 (CCPD File Nos. TBre1, CDow1).

The Corpus Christi Police Department (the "department") received two requests from different requestors for an incident report concerning a specified incident. The second requestor additionally requests all information pertaining to two different reports. You state you have released some of the information requested by the second requestor. You inform us you have redacted information pursuant to section 552.136 of the Government Code.¹ 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.

¹Section 552.136(c) authorizes a governmental body to redact the information described in section 552.136(b) without the necessity of seeking an attorney general decision. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

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. *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. *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 Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department must generally withhold the marked information under section 552.101 in conjunction with common-law privacy.

We note, however, the first requestor may be acting as the authorized representative of the individual whose privacy interests are at issue. As such, the first requestor may have a right of access to the information concerning this individual 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, if the first requestor is acting as the authorized representative of the individual whose information is at issue, he has a right of access to the information concerning this individual pursuant to section 552.023 of the Government Code, 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 first requestor is not acting as the authorized representative of the individual whose information is at issue, the department must withhold the marked information from this requestor under section 552.101 in conjunction with common-law privacy. In either event, the department must withhold the information marked under section 552.101 in conjunction with common-law privacy from the second requestor.

You state the department will withhold the driver's license information you have marked under section 552.130(a)(1) pursuant to section 552.130(c) of the Government Code.² However, as stated above, the first requestor may be acting as the authorized representative of the individual whose driver's license information is at issue. Accordingly, we will address the applicability of section 552.130 to the information at issue.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). We note section 552.130 protects privacy interests. If the first requestor is the authorized representative of the individual whose driver's license information is at issue, then he has a right of access to the driver's license information at issue pursuant to section 552.023, and this information may not be withheld from him under section 552.130. If the first requestor is not acting as the authorized representative of the individual whose driver's license information is at issue, then the department must withhold the driver's license information under section 552.130 from the first requestor. In either event, the department must withhold the marked driver's license information from the second requestor under section 552.130 of the Government Code.

In summary, if the first requestor is not acting as the authorized representative of the individual with the privacy interest, the department must withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code from both requestors and release the remaining information. If the first requestor is acting as the authorized representative of the individual with the privacy interest, the department must withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code only from the second requestor. The department must release the remaining information to both requestors.

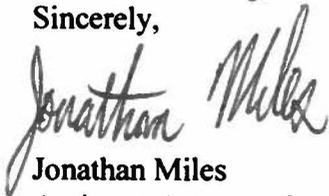
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

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# 477137

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)