



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2013

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

OR2013-06423

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# 484596 (ORR. No. MMit1).

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified incident. You claim 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. 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*. *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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the

individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy.

You claim the submitted information must be withheld in its entirety to protect the victim's common-law privacy. In this instance, however, you have not demonstrated, nor does it otherwise appear, this is a situation in which this information must be withheld in its entirety on the basis of the victim's common-law privacy. However, upon review, we agree that portions of the information at issue are highly intimate or embarrassing and of no legitimate public concern. Accordingly, this information is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy.

In this instance, we note the requestor is the spouse of the individual whose information is at issue, and may be acting as her authorized representative. As such, the requestor may have a right of access to his spouse's information under section 552.023 of the Government Code. *See Gov't Code § 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); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the requestor is acting as his spouse's authorized representative, he has a right of access to the information pertaining to his spouse pursuant to section 552.023(a), 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 requestor is not acting as his spouse's authorized representative, the department must withhold the information pertaining to his spouse, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130(a)(1). We note section 552.130 protects privacy interests. As noted above, because the requestor may be the authorized representative of his spouse the requestor may have a right of access to his spouse's driver's license information. Thus, if the requestor is acting as the authorized representative of his spouse, then he has a right of access to her driver's license information pursuant to section 552.023, and this information may not be withheld from him under section 552.130 of the Government Code. If the requestor is not acting as the authorized representative of his spouse, then the department must withhold the information we have marked under section 552.130 of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

In summary, if the requestor is acting as the authorized representative of his spouse then he has a right of access to the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. In that case, the department must release the entirety of the submitted information. If the requestor is not the authorized representative of his spouse then the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code, and release the remaining information.²

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 484596

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²In either instance, we note the information being released includes information pertaining to the requestor's minor child that would be confidential with respect to the general public. See Gov't Code § 552.023(b); ORD 481. Therefore, if the department receives another request for this information from another requestor, the department must again seek a ruling from this office.