



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2013

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2013-11821

Dear Ms. Quinn:

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# 493287 (CP Ref. No. 13-573).

The City of Cedar Park (the "city") received a request for the report pertaining to a specified motor vehicle accident. You claim the submitted information is exempted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 730.004 of the Transportation Code. Section 730.004 provides, "[n]otwithstanding any other provision of law to the contrary, including [the Act], except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. Section 730.004 applies only to an "agency" that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established the city compiles or maintains motor vehicle records. Therefore, section 730.004 does not apply to the city, and

¹Although you do not cite to section 552.101 of the Government Code in your brief to this office, we understand you to raise section 552.101 based on the substance of your arguments.

the city may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

You state the city will withhold the driver's license numbers you have marked under section 552.130(c) of the Government Code² and the Texas license plate numbers you have marked pursuant to Open Records Decision No. 684 (2009).³ Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(1)-(2). We note this exception protects personal privacy. In this instance, the requestor is an insurer of the individual to whom some of the submitted information pertains. As such, the requestor has a right of access to the insured person's driver's license information under section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).⁴ Therefore, the driver's license information related to the insured person may not be withheld under section 552.130. Accordingly, the city must withhold the driver's license and motor vehicle information that do not relate to the requestor's insured, which you have marked and we have marked, under section 552.130 of the Government Code. However, we find none of the remaining information consists of driver's license or motor vehicle record information subject to section 552.130 of the Government Code. Therefore, none of the remaining information may be withheld on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts,

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to 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* Gov't Code § 552.130(d), (e).

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, the Texas legislature recently amended section 552.130 to allow a governmental body to redact the information described in subsection 552.130(a)(2) of the Government Code without the necessity of seeking a decision from the attorney general. Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to 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* Gov't Code § 552.130(d), (e). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to subsection 552.130(a)(2) only in accordance with section 552.130, not Open Records Decision No. 684.

⁴Section 552.023 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).

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 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 the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the driver's license and motor vehicle information that do not relate to the requestor's insured, which you have marked and we have marked, under section 552.130 of the Government Code, and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 493287

Enc. Submitted documents

c: Requestor
(w/o enclosures)