



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2013

Mr. Stephen A. Cumbie
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2013-12854

Dear Mr. Cumbie:

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# 495539 (City PIR No. W026040).

The City of Fort Worth (the "city") received a request for a specified incident report. We understand the city will withhold the social security number you have marked pursuant to section 552.147 of the Government Code.¹ The city states it has released some of the requested information but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.² We have considered the claimed exceptions 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 doctrine of common-law privacy, which protects information that (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

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

²We understand you to raise section 552.130 of the Government Code based on your markings.

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 satisfied. *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. *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. *E.g.*, 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 agree the information you have marked under common-law privacy is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the city must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130(a)(1) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country[.]

Gov't Code § 552.130(a)(1). The city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

However, the information you have marked under common-law privacy and some of the motor vehicle record information you have marked under section 552.130 pertain to the requestor's spouse. Section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We note section 552.130 of the Government Code protects personal privacy. Thus, if the requestor is his spouse's authorized representative, then pursuant to section 552.023 the city must release the information pertaining to the requestor's spouse that you have marked under common-law privacy and section 552.130.

To conclude, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.130 of the Government Code. However, the city must release the marked information pertaining to the requestor's spouse if the requestor is his spouse's authorized

representative pursuant to section 552.023 of the Government Code. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 495539

Enc. Submitted documents

c: Requestor
(w/o enclosures)