



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2014

Ms. Janet L. Kellogg
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2014-01957

Dear Ms. Kellogg:

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# 512872 (ORR# Flyn1).

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified incident. You claim some of the submitted information is excepted 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 excepts "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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Upon review, we

¹Although you do not raise section 552.130 of the Government Code in your brief, we understand you to raise this exception based on your markings.

find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must generally withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code § 552.130*. Upon review, we agree portions of the remaining information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a) (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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). The department must generally withhold the remaining motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

In this instance, however, the submitted information reveals the requestor has a statutory durable power of attorney for the individual whose privacy interests are at issue. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to the individual's private information. *See Gov't Code § 552.023(a)*; ORD 481 at 4. Accordingly, if the requestor is acting as the authorized representative of the individual, then the department may not withhold any portion of the remaining marked information from this requestor under section 552.101 of the Government Code on the basis of common-law privacy or under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of the individual whose information is at issue, then the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the remaining information you marked, and the additional information we marked, under section 552.130 of the Government Code, and must release the remaining information. If the requestor is acting as the authorized representative of the individual whose information is at issue, then the department must release the entirety of the submitted information to this requestor.

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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is written in a cursive style with a long, sweeping underline.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 512872

Enc. Submitted documents

c: Requestor
(w/o enclosures)