



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2014

Ms. Alexis G. Allen
Counsel for the City of Lancaster
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard Street
Dallas, Texas 75201

OR2014-02765

Dear Ms. Allen:

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# 514241 (Ref. No. 63777).

The Lancaster Police Department (the "department"), which you represent, received a request for a specified incident report. 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. 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Generally, only highly intimate or embarrassing information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, an entire report must be withheld to protect the

individual's privacy. Upon review, we find you have not demonstrated, and the submitted information does not reflect, a situation exists in which the submitted information must be withheld in its entirety to protect an individual's privacy interest. However, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, however, the submitted information reveals the requestor may be the authorized representative of the individual whose privacy interests are at stake, and may have a right of access to information pertaining to that individual that would otherwise be confidential under common-law privacy. See Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is acting as the individual's authorized representative, then the department may not withhold the information we have marked from this requestor under section 552.101 of the Government Code on the basis of common-law privacy. However, if the requestor is not acting as the authorized representative of the individual whose privacy interests are at issue, then the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. In that event, we find the remaining information is not highly intimate or embarrassing information of no legitimate public concern and may not be withheld under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ Section 552.130 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 find a portion of the submitted information, which we have marked, consists of driver's license information. We note section 552.130 protects personal privacy. As noted above, the requestor may be the authorized representative of the individual whose driver's license information is at issue. Accordingly, if the requestor is acting as the authorized representative of the individual, then the requestor has a right of access to the marked driver's license information under section 552.023 of the Government Code and it may not be withheld under section 552.130. See *id.* § 552.023(a); ORD 481 at 4. If the requestor is not acting as the authorized representative of the individual, the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of the individual whose privacy interests are at issue, then (1) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with

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

common-law privacy; (2) the department must withhold the driver's license information we have marked under section 552.130 of the Government Code; and (3) the department must release the remaining information.² If the requestor is acting as the authorized representative of the named individual, then the department must release the submitted information in its entirety 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 514241

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released includes the requestor's motor vehicle record information, to which the requestor has a right of access. *See* Gov't Code § 552.023(a); ORD 481 at 4. Section 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* 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 id.* § 552.130(d), (e). Accordingly, if the department receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the department to redact the requestor's motor vehicle record information without the necessity of requesting a decision under the Act.