



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2014

Mr. C. Tyler Atkinson
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2014-05072

Dear Mr. Atkinson:

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# 517825 (PIR No. W031069).

The City of Fort Worth (the "city") received a request for a specified incident report. You indicate you will redact the insurance policy number you have marked under section 552.136(c) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code.² We have considered the exceptions 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 if it (1) contains highly intimate or embarrassing facts, the publication

¹Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

²Although you do not raise section 552.130 in your brief, we understand you to raise this exception based on your markings in the submitted information.

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. 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). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you have marked, as well as the additional information 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 or driver's license or motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1)-(2). Upon review, we find the city must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.³

In summary, the city must withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information marked under section 552.130 of the Government Code. The city must release the remaining information.

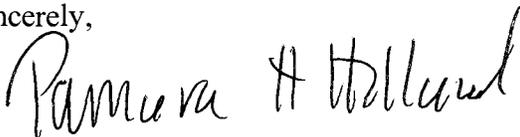
Finally, you ask this office to issue a previous determination permitting the city to withhold a driver's license organ donor election under section 552.101 of the Government Code in conjunction with common-law privacy. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling shall serve as a previous

³We note 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. 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).

determination under section 552.301(a) authorizing the city to withhold a driver's license organ donor election under section 552.101 of the Government Code in conjunction with common-law privacy without the need of requesting a ruling from this office. We note common-law privacy is a personal right that lapses at an individual's death. *See* Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the city to withhold a living individual's driver's license organ donor election. This previous determination is not applicable to a deceased individual's driver's license organ donor election. We also note that a person or a person's authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person's privacy interests. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination is not applicable to a request by a person, or an authorized representative of a person, for his own driver's license organ donor election. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the city need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ac

Ref: ID# 517825

Enc. Submitted documents

c: Requestor
(w/o enclosures)