



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2014

Ms. Alexis G. Allen
Counsel for the City of Lancaster
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

OR2014-13818

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# 532246 (File Ref. # 66281).

The Lancaster Police Department (the "department"), which you represent, received two requests from the same requestor for information pertaining to a specified incident. You state the department has released most of the responsive information. You claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information was created after the request was received. This information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, you state the department will redact information pursuant to sections 552.130 and 552.147 of the Government Code. 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

¹You acknowledge the department failed to comply with its procedural obligations under the Act. *See* Gov't Code § 552.301(b), (e). However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the information at issue.

a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 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. *See id.* § 552.147(b). However, we note the submitted information contains the requestor's client's driver's license information and social security number. Section 552.130 of the Government Code provides information relating to a driver's license issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1)-(2). We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her client's driver's license information under section 552.023 of the Government Code and it may not be withheld under section 552.130 of the Government Code. *See id.* § 552.023(b) (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). Furthermore, the requestor has a right of access to her client's social security number and it may not be withheld under section 552.147 of the Government Code. *See generally* Gov't Code § 552.023(b).

You seek to withhold some of the submitted information under section 552.101 of the Government Code, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, the information you seek to withhold under common-law privacy pertains to the requestor's client. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, the requestor has a right of access to information pertaining to her client that would otherwise be confidential under common-law privacy. Accordingly, the department may not withhold any of the submitted information from this requestor under section 552.101 on the basis of common-law privacy. As you raise no further exceptions to disclosure, the submitted information must be released to this requestor.²

²We note the requestor has a special right of access under section 552.023 of the Government Code to some of the information being released. *See* Gov't Code § 552.023(b). Therefore, if the department receives another request for this information from a person who does not have a special right of access to this information, the department should resubmit this same information and request another decision from this office. *See id.* §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 532246

Enc. Submitted documents

c: Requestor
(w/o enclosures)