



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-01102

Dear Mr. Phillips:

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# 333777.

The City of Fort Worth (the "city") received a request for a specified police report. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments concerning disclosure of requested information).

Initially, we note that social security numbers and Texas driver's license numbers have been redacted from the submitted documents. The city is authorized to redact social security numbers pursuant to section 552.147(b) of the Government Code and Texas motor vehicle record information pursuant to previous determinations issued to the city under section 552.130 of the Government Code in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).¹ We note, however, that the requestor is an attorney representing one of the individuals whose Texas driver's license number and social security number have been redacted. Thus, the requestor has a right of access to this individual's Texas driver's

¹Section 552.147(b) 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.

license number and social security number under section 552.023 of the Government Code, and that information may not be withheld from this requestor under section 552.130 or section 552.147(b). *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

Next, 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 (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 concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and 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. Although you argue that the submitted information is excepted under common-law privacy, the requestor is an attorney representing the individual at issue in this instance. Section 552.023 of the Government Code gives a person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as the subject of the information. *See* Gov't Code § 552.023. Thus, in this instance, the requestor has a special right of access to her client's information, and the city may not withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. *See id.*; ORD 481 at 4. However, we note that a portion of the submitted information implicates the common-law privacy of another individual. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses information protected by other statutes. Section 1703.306 of the Occupations Code provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. We have marked the information that the city must withhold under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Finally, section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We note that section 552.137 protects privacy interests and that the requestor has a right of access to her client's e-mail address. *Id.* § 552.023. Accordingly, the e-mail address you have marked may not be withheld from this requestor.

In summary, (1) the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy; and (2) the city must withhold the polygraph information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code. The remaining information must be released to the requestor.²

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.

²We note that the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the city receives another request for this particular information from a different requestor, then the city must again seek a decision from this office.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 333777

Enc. Submitted documents

c: Requestor
(w/o enclosures)