



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2009

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

OR2009-08854

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# 347121 (Ft. Worth Public Information Request No. 2974-09).

The City of Fort Worth (the "city") received a request for a specified incident report involving a named individual. You state that you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you are withholding social security numbers under section 552.147 of the Government Code.¹ You claim that portions of the requested information are 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. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and

¹Section 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 under the Act.

(2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also* *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The requestor in this case knows the identity of the alleged victim. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We conclude, therefore, that the city must generally withhold the entire incident report pursuant to section 552.101.

However, we note that the requestor may be the insurance provider of the victim listed in the submitted incident report. As such, the requestor may have a right of access to the submitted information under section 552.023 of the Government Code. Section 552.023 provides that a person or a person's authorized representative has a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. *See* Gov't Code § 552.023. In this instance, it is not clear that the requestor is the individual's authorized representative. Therefore, we are forced to rule conditionally. If the requestor is the victim's authorized representative and has a right of access under section 552.023, then the submitted incident report may not be withheld under section 552.101 and must be released to the requestor.² However, if the requestor is not the victim's authorized representative, then she does not possess a right of access under section 552.023 of the Government Code. The city

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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). However, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office. We also note that if the requestor is the authorized representative of the victim, she has a right of access to the victim's Texas motor vehicle information and social security number pursuant to section 552.023. *See* Gov't Code § 552.023.

must therefore withhold the entire incident report under section 552.101 of the Government Code in conjunction with common-law privacy.

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.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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 347121

Enc. Submitted documents

c: Requestor
(w/o enclosures)