



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2009

Mr. Brandon S. Shelby
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106

OR2009-13679

Dear Mr. Shelby:

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# 356607.

The City of Sherman (the "city") received a request for two specified incident reports, as well as other related reports. You state that the city has released some of the requested information to the requestor. You claim that 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 public 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 (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 demonstrated. *Id.* at 681-82. The type of information considered intimate or 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. This office has also found that some kinds of medical information or information indicating disabilities or

specific illnesses are excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 343 (1982) (references in emergency medical records to drug overdoses, acute alcohol intoxication, obstetrical or gynecological illnesses, convulsions or seizures, and emotional or mental distress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 470 (1987) (illness from severe emotional and job-related stress). Upon review, we find that the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Thus, the city may generally withhold this information under section 552.101 in conjunction with common-law privacy.

However, we note the requestor may be the authorized representative of the person to whom some of the private information pertains. A person or a person's authorized representative has a special right of access to private information concerning himself under section 552.023 of the Government Code. *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, if the requestor is not the authorized representative of the subject individual, then the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is the authorized representative of the subject individual, then the city may not withhold the information we have marked pertaining solely to the subject individual under section 552.101 in conjunction with common-law privacy. In either case, the requestor does not have a right of access to private information pertaining to other individuals, which must be withheld under section 552.101 in conjunction with common-law privacy. Furthermore, we find that none of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and it may not be withheld on the basis of common-law privacy.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]"¹ Gov't Code § 552.130. Therefore, the city must withhold the information we have marked under section 552.130 of the Government Code.

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 id.* § 552.137(a), (b). The e-mail address at issue is not of a type specifically excluded by section 552.137(c). *See* Act of May 15, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Gen. Laws 651, 651-52, amended by Act of May 27, 2009, 81st Leg., R.S., ch. 962, § 7, 2009 Tex. Sess. Law Serv. 2555, 2557

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

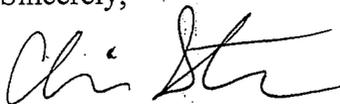
(Vernon) (to be codified as an amendment to Gov't Code § 552.137(c)). Therefore, unless the owner of the e-mail address at issue consents to its release, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code.

In summary, (1) if the requestor is not the authorized representative of the subject individual, then the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; if the requestor is the authorized representative of the subject individual, the city must only withhold the information we have marked that implicates the privacy of other individuals under section 552.101 in conjunction with common-law privacy; (2) the city must withhold the information we have marked under section 552.130 of the Government Code; and (3) unless the owner of the e-mail address at issue consents to its release, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code. The remaining information must be released to the 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.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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 356607

Enc. Submitted documents

c: Requestor
(w/o enclosures)