



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2009

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

OR2009-15513

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# 360260 (Fort Worth PIR No. 5219-09).

The City of Fort Worth (the "city") received a request for a specified incident report. You state you have redacted Texas motor vehicle record information pursuant to the previous determinations issued in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006).¹ You also state that social security numbers have been redacted in accordance with section 552.147(b) of the Government Code.² You claim that a portion of 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under section 552.301(a)).

²Section 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. We note the submitted information does not include social security numbers. Thus, section 552.147 is not applicable to this information.

Code § 552.101. This section incorporates 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. *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. 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. 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 agree that a portion of the submitted information, which you have highlighted, is highly intimate or embarrassing and not of legitimate public interest. Thus, the city may generally withhold this information under section 552.101 in conjunction with common-law privacy.

However, we note the requestor is the brother of the person to whom the private information pertains, and may be his authorized representative. 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 you have highlighted under section 552.101 of the Government Code in conjunction with common-law privacy, and release the remaining submitted information. However, if the requestor is the authorized representative of the subject individual, then the city may not withhold the information you have highlighted under section 552.101 in conjunction with common-law privacy, and must release the submitted information in its entirety.

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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett".

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 360260

Enc. Submitted documents

c: Requestor
(w/o enclosures)