ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2011

Mr. John D. Lestock
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2011-05141

Dear Mr. Lestock:

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# 414309.

The Paris Police Department (the "department") received a request for all records pertaining to an incident that occurred on a specified date involving a named individual. You claim some 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 Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (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 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. Upon review, we find the information we have marked is highly intimate

or embarrassing and of no legitimate public interest. Thus, the information we have marked is generally confidential under section 552.101 in conjunction with common-law privacy. We note, however, the requestor in this instance may be the authorized representative of the named individual whose privacy interests are at issue. Section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, we are unable to determine whether the requestor is, in fact, the authorized representative of the named individual at issue. Therefore, we must rule conditionally. To the extent the requestor is the authorized representative of the named individual at issue, the department may not withhold from this requestor the information marked under section 552.101 in conjunction with common-law privacy. To the extent the requestor is not the authorized representative of the named individual at issue, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130 provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release.[1] Gov't Code § 552.130(a)(1). Upon review, we find the Texas driver's license number we have marked is generally confidential under section 552.130. However, as noted above, the requestor may be the authorized representative of the named individual at issue, and therefore may have a special right of access to his information. *See id.* § 552.023(a); ORD 481 at 4. Therefore, to the extent the requestor is the authorized representative of the named individual at issue, the department may not withhold from this requestor the information marked under section 552.130. To the extent the requestor is not the authorized representative of the named individual at issue, the department must withhold the marked information under section 552.130 of the Government Code.[2]

In summary, if the requestor is not the authorized representative of the named individual at issue, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we

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

[2]We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies, authorizing the withholding of ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

have marked under section 552.130 of the Government Code. If the requestor is the authorized representative of the named individual at issue, the department must release the marked information. In either case, the remaining information must be released.[3]

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,

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 414309

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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[3]The remaining information contains social security numbers subject to section 552.147 of the Government Code. Section 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. Gov't Code § 552.147(b). Section 552.147 is based on privacy concerns. Accordingly, pursuant to section 552.023, the requestor has a right of access to the named individual's social security number if he is acting as his authorized representative. We also note the remaining information contains information to which the requestor has a right of access. *See id.* § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.