



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2013

Ms. Ashley D. Dierker
Counsel for the City of Hudson Oaks
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2013-05856

Dear Ms. Dierker:

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# 483781.

The City of Hudson Oaks (the "city"), which you represent, received a request for information pertaining to a specified motor vehicle accident. You state the city has released the Texas Peace Officer's Crash Report Form CR-3 to the requestor. *See* Transp. Code § 550.065(c)(4) (governmental body must release accident report to person who provides two of following three items of information: date of accident; name of any person involved in accident; and specific location of accident). You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 exception encompasses information that other statutes make confidential. You seek to withhold a portion of the submitted information under section 552.101 in conjunction with section 12.097 of the Health and Safety Code, which provides in relevant part:

- (a) All records, reports, and testimony relating to the medical condition of an applicant or license holder:

- (1) are for the confidential use of the medical advisory board [of the Texas Department of State Health Services (the "department")], a panel, or the Department of Public Safety of the State of Texas ["DPS"];
- (2) are privileged information; and
- (3) may not be disclosed to any person or used as evidence in a trial except as provided by Subsection (b).

Health & Safety Code § 12.097(a); *see also id.* §§ 12.092(b) (providing for appointment of medical advisory board to assist DPS in determining whether driver's license applicant or license holder is capable of safely operating motor vehicle), .095 (providing for medical advisory board opinion or recommendation to DPS). Section 12.097 relates to records held by the department's medical advisory board or certain DPS records. In this instance, however, the information you seek to withhold consists of a record held by the city. Thus, we find section 12.097 is not applicable to the information at issue in the possession of the city. Accordingly, we conclude this information is not confidential pursuant to section 12.097 of the Government Code and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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 established. *Id.* at 681-82. The type of information considered highly 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 a portion of the information at issue is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130(a)(1)-(2). Upon review, find the city must withhold the driver's license and motor vehicle record information we have marked under section 552.130 of the Government Code. However, the remaining information you have highlighted is not subject to section 552.130. Thus, the city may not withhold this information on that basis.

In summary, the city must withhold the information we have marked (1) under section 552.101 of the Government Code in conjunction with common-law privacy

and (2) under section 552.130 of the Government Code. The city must release the remaining information.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 483781

Enc. Submitted documents

c: Requestor
(w/o enclosures)