



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2013

Ms. Linda M. Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2013-07058

Dear Ms. Champion:

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# 486387.

The City of Victoria (the "city") received a request for information pertaining to a specified police report involving a named individual. You state you will release some of the requested information. 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.

You assert the submitted prosecution charge report is confidential under section 552.101 of the Government Code because it is "attorney work product." 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 office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Furthermore, you have not raised another exception in this regard, established the prosecutor's interest in protecting the information as attorney work product, or explained why the information is protected as work product. *See* Gov't Code §§ 552.301(a), (e)(1)(A) (requiring governmental body to raise and explain applicability of exceptions), .108(a)(4), (b)(3). Therefore, we conclude the city may not withhold the prosecution charge report under section 552.101 of the Government Code as "attorney work product."

Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information (1) containing 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 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 also has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest.

We note the requestor may be the authorized representative of the individual whose privacy interest is at issue, and thus, may have a right of access to information pertaining to that individual that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Because we are unable to determine whether the requestor is the authorized representative of the individual whose privacy interest is at issue, we must rule conditionally. Accordingly, if the requestor is not acting as the authorized representative of the individual with the privacy interest, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the authorized representative of the individual whose privacy interests are at issue, the city may not withhold the marked information from this requestor.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130(a)(1). Accordingly, the city must generally withhold the information we have marked under section 552.130. However, we note section 552.130 is based on privacy principles. As noted above, it is not clear whether the requestor is acting as the named individual's authorized representative. As such, this requestor may have a right of access to the named individual's information, and we must rule conditionally. *See id.* § 552.023; ORD 481 at 4. If the requestor does not have a right of access to this information, the city must withhold the information we marked under section 552.130 of the Government Code. Conversely, if the requestor has a right of access to the information at issue, the city may not withhold the information we have marked pertaining to the named individual from this requestor under section 552.130. In either

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

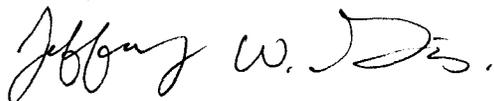
event, the city must withhold the drivers license information belonging to other individuals we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of the named individual, the city 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 have marked under section 552.130 of the Government Code, and release the remaining information. Conversely, if the requestor is acting as the authorized representative of the named individual, the city must withhold the information not pertaining to the named individual under section 552.130 of the Government Code and 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 486387

Enc. Submitted documents

c: Requestor
(w/o enclosures)