



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2013

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2013-08190

Dear Mr. Ohnemiller:

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# 487709 (City ID# 12015).

The City of Midland (the "city") received a request for harassment reports involving the requestor as a complainant and witness. You state some information has been disclosed to the requestor. You claim portions of the submitted information are 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. Section 552.101 encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *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 the information we have marked 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. However, none of the remaining information you seek to withhold is highly intimate or embarrassing information of no legitimate public interest. Therefore, the city may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). We note section 552.130 protects personal privacy; therefore, the requestor has a right of access to her own driver's license information under section 552.023 of the Government Code. *See generally id* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the city may not withhold the requestor's own driver's license information pursuant to section 552.130. Upon review, we find the city must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy and (2) section 552.130 of the Government Code. The city must release the remaining information.¹

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,

¹We note the information being released contains a social security number. Section 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. Gov't Code § 552.147(b). As noted above, the information being released includes the requestor's driver's license information, which is excepted from public disclosure under section 552.130 of the Government Code. *Id.* § 552.023. Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *Id.* § 552.130(c). Thus, should the city receive another request for the submitted information from a different requestor, the city is authorized to withhold the requestor's driver's license information without requesting another ruling.

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 black ink, consisting of several overlapping, sweeping lines that form a stylized representation of the name Ana Carolina Vieira.

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 487709

Enc. Submitted documents

c: Requestor
(w/o enclosures)