



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2013

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2013-08209

Dear Mr. Weir:

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# 488796 (COSA File No. W013973).

The City of San Antonio (the "city") received a request for a specified offense report. 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.

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 common-law right to 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 met. *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. *See id.* at 683. This office has also 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. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities

protected from disclosure), 422 (1984), 343 (1982). Upon review, we agree that portions of the information at issue are highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate, however, how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

However, we note the requestor is the spouse of the individual to whom the submitted information pertains and may be acting as his authorized representative. As such, the requestor may have a right of access to the information we have marked under section 552.023 of the Government Code, which provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Thus, because common-law privacy protects personal privacy, the city may not withhold the information at issue from the individual at issue or his authorized representative on that basis. Therefore, if the requestor is acting as her spouse’s authorized representative, she has a right of access to the information we have marked pursuant to section 552.023(a), and it may not be withheld from her under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not acting as her spouse’s authorized representative, the city must withhold the information we have marked under section 552.101 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 issued by an agency of Texas or another state or country is excepted from public release.¹ Gov’t Code § 552.130(a)(1). We have marked motor vehicle record information subject to section 552.130. However, we note section 552.130 protects privacy interests. As noted above, because the requestor may be her spouse’s authorized representative, she may have a right of access to her spouse’s motor vehicle record information. Thus, if the requestor is acting as her spouse’s authorized representative, then she has a right of access to the marked motor vehicle record information pursuant to section 552.023, and this information may not be withheld from her under section 552.130. If the requestor is not acting as her spouse’s authorized representative, then the city must withhold the motor vehicle record information we have marked under section 552.130.

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).

In summary, if the requestor is not acting as her spouse's authorized representative, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code and release the remaining information. If the requestor is acting as her spouse's authorized representative, then the submitted information must be released in its entirety.²

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

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²We note the information being released in either instance contains the requestor's driver's license information which is generally confidential under section 552.130 of the Government Code. However, because section 552.130 protects personal privacy, the requestor has a right to her own information under section 552.023 of the Government Code. See Gov't Code § 552.023(a); ORD 481 at 4. We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c). Thus, if the city receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the city to redact this driver's license information. We further note the remaining information 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 without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). Because section 552.147 protects personal privacy interests and because, as previously noted, the requestor may be the authorized representative of the individual whose social security number is at issue, the requestor may have a right of access under section 552.023 to the individual's social security number. *Id.* § 552.023(b). If the requestor is an authorized representative of the individual at issue, then she has a right of access under section 552.023 of the Government Code to the individual's social security number, and it may not be withheld from her under section 552.147. If the requestor is not an authorized representative of the individual at issue, we note the city may withhold it under section 552.147(b).

Ref: ID# 488796

Enc. Submitted documents

c: Requestor
(w/o enclosures)