



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2013

Ms. Michelle M. Kretz
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2013-08957

Dear Ms. Kretz:

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# 489304 (PIR# W024571).

The City of Fort Worth (the "city") received a request for incident report numbers 13-15152 and 13-23570, as well as call sheet number 130204606. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 demonstrated. *See 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 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).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the request for information reveals the requestor knows the identity of the individual involved as well as the nature of the information at issue in the submitted call sheet. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold the submitted call sheet, which we have marked, in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, although you seek to withhold report numbers 13-15152 and 13-23570 in their entirety, you have not demonstrated, nor does it otherwise appear, this is a situation where the entire report must be withheld on the basis of common-law privacy. Upon review, we agree some of the remaining information at issue is highly intimate and embarrassing and of no legitimate public interest. Therefore, except as we have marked for release, the city must withhold the information you have marked, as well as the additional information we have marked, in report numbers 13-15152 and 13-23570 under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated any portion of the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city may not withhold any of 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 excepts from disclosure information that relates 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. Gov't Code § 552.130(a)(1)-(2). We note the requestor has a right of access to her own driver's license information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the requestor's driver's license information may not be withheld under section 552.130 but must be released pursuant to section 552.023. However, the city must withhold the remaining driver's license information you have marked, in addition to the driver's license information we have marked, under section 552.130 of the Government Code.

In summary, except as we have marked for release, the city must withhold the information you have marked, in addition to the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the

driver's license information pertaining to the requestor, the city must withhold the driver's license information you have marked, in addition to the driver's license information we have marked, under section 552.130 of the Government Code. The remaining information must be released to this requestor.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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 489304

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the information being released contains the requestor's driver's license information, which is generally confidential under section 552.130 of the Government Code. However, as previously noted, section 552.130 protects personal privacy, and 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.