



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 9, 2015

Mr. Galen Gatten
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2015-06817

Dear Mr. Gatten:

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# 559365 (Fort Worth PIR No. W039766).

The City of Fort Worth (the "city") received a request for a specified police report. We understand the city will withhold certain information it has marked pursuant to section 552.147(b) of the Government Code and the previous determination issued to the city in Open Records Letter No. 2011-15641 (2011).¹ The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

¹We note 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. *See* Gov't Code § 552.147(b). Open Records Letter No. 2011-15641 is a previous determination issued to the city authorizing the city to withhold the originating telephone numbers of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, without requesting a decision from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

Section 552.101 encompasses the doctrine of 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Generally, only highly intimate information implicating the privacy of an individual is withheld. However, in certain instances, where it is demonstrated 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, although the city seeks to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy, we find this is not a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the entirety of the submitted information under section 552.101 of the Government Code. However, upon review, with the exception of the information we have marked for release, we find the information the city has marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate the remaining information, including the information we have marked for release, is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

We understand the city will redact certain motor vehicle record information pursuant to section 552.130(c) of the Government Code.² However, we note some of the information the city has marked is not subject to section 552.130. Section 552.130 provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, with the exception of the information we have marked for release, we find the city must withhold the motor vehicle record information the city has marked under section 552.130 of the

²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Government Code. However, the information we have marked for release is not subject to section 552.130; thus, it may not be withheld on that basis.

In summary, with the exception of the information we have marked for release, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the city must withhold the motor vehicle record information the city has marked 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 559365

Enc. Submitted documents

c: Requestor
(w/o enclosures)