



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2015

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2015-09193

Dear Ms. Armstrong:

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# 563457 (ORR# 2015-02738).

The Dallas Police Department (the "department") received a request for information pertaining to case number 254092-2014. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹We note the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). The department asserts section 552.101 of the Government Code and some of the information is subject to section 552.130 of the Government Code. Because sections 552.101 and 552.130 are mandatory exceptions that can provide compelling reasons to overcome the presumption of openness caused by failure to comply with section 552.301, we will address the applicability of these exceptions to the submitted information, notwithstanding the department's violation of section 552.301 in requesting this decision. *See id.* §§ 552.007, .302.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.101. 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); see Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identities of witnesses to and victims of sexual harassment are highly intimate or embarrassing information and public does not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The submitted information pertains to, among other things, an alleged sexual assault. The request reveals the requestor in this case knows the identity of the alleged sexual assault victim. We believe, in this instance, providing any of the submitted information to the requestor would not preserve the victim's common-law right to privacy. Therefore, we conclude the submitted information is generally protected in its entirety under section 552.101 in conjunction with common-law privacy. We note, however, the requestor may be acting as the authorized representative of the individual to whom the information at issue pertains. Thus, if the requestor is not acting as the individual's authorized representative, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is acting as the individual's authorized representative, then the requestor has a right of access pursuant to section 552.023 of the Government Code to the submitted information that implicates the individual's privacy, and the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. See Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles).

We note, however, a portion of the submitted information is subject to section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). The information at issue, which we have marked,

³The 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).

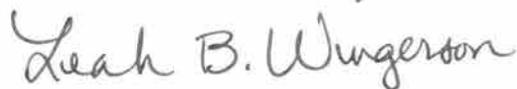
pertains to an individual for whom the requestor is not acting as an authorized representative. Therefore, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of the individual whose privacy interests are at issue, then the department must withhold the submitted information in its entirety 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, then the department must release the submitted information.⁴ In releasing the information, the department must withhold the information we have marked under section 552.130 of the Government Code.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 563457

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information to be released includes 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).