



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2015

Ms. Julie P. Doshier
Counsel for City of Highland Village
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

OR2015-09563

Dear Ms. Doshier:

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# 563933 (Ref. No. 70537, 2015-041).

The City of Highland Village (the "city"), which you represent, received a request for a specified police incident report involving a named individual. You state the city will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked pertains to a pending prosecution. Based on your representation, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per*

¹Section 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).

curiam, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.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.” 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). You claim the information you have marked in the remaining information is protected by common-law privacy. Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, 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.

You state you will redact the motor vehicle record information you have marked under 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. Gov’t Code § 552.130(a). We note the remaining information contains additional information, which we have marked, that is subject to section 552.130. However, section 552.130 protects personal privacy. Some of the marked information pertains to the requestor’s wife. If the requestor is acting as his wife’s authorized representative, then the requestor has a right of access to his wife’s motor

²As our ruling is dispositive, we need not address your remaining argument against disclosure for some of this information.

³You state the city will redact the information subject to section 552.130 pursuant to the previous determination issued in Open Records Decision No. 684 (2009). However, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in section 552.130(a) of the Government Code, 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). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to section 552.130(a) only in accordance with section 552.130(c), not Open Records Decision No. 684.

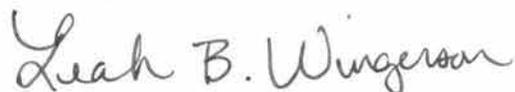
vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, to the extent the requestor is acting as his wife's authorized representative, the city must release to the requestor the marked information pertaining to his wife, but withhold the remaining marked information under section 552.130 of the Government Code. To the extent the requestor is not acting as his wife's authorized representative, the city must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as his wife's authorized representative, the city must release his wife's marked information, but withhold the remaining the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. If the requestor is not acting as his wife's authorized representative, the city must withhold the information you have marked, and the additional information we have 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 563933

Enc. Submitted documents

c: Requestor
(w/o enclosures)