



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2015

Ms. Jessica D. Richard
Assistant City Attorney
Office of the City Attorney
City of New Braunfels
424 South Castell Avenue
New Braunfels, Texas 78130

OR2015-09565

Dear Ms. Richard:

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# 563878 (City Control No. 504-15).

The New Braunfels Police Department (the "department") received a request for information pertaining to a specified incident. You claim portions of the submitted information are 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 "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 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). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court

in *Industrial Foundation*. Accordingly, the department generally must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated the remaining information is highly intimate or embarrassing and of no legitimate public interest; thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information contains information subject to section 552.130 of the Government Code, which 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.¹ Gov't Code § 552.130(a). Upon review, we find the department generally must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

However, we note the information we have marked to withhold under section 552.101 of the Government Code in conjunction with common-law privacy, and some of the motor vehicle record information we have marked under section 552.130 of the Government Code,² pertain to the requestor's sister. Further, the submitted information reveals the requestor is the caregiver for her sister. As such, the requestor may be the authorized representative for her sister and, thus, she may have a right of access to some of the information we have marked pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) (“[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”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, if the department determines the requestor is the authorized representative of the individual whose privacy interests are at issue, the department may not withhold the information we have marked that pertains to the requestor's sister under section 552.101 of the Government Code in conjunction with common-law privacy or under section 552.130 of the Government Code. In that instance, the department must withhold the motor vehicle record information we have marked that does not pertain to the requestor's sister under section 552.130 of the Government Code. However, if the department determines the requestor is not the authorized representative of the individual at issue, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

²We note the purpose of section 552.130 of the Government Code is to protect the privacy interests of individuals.

with common-law privacy and under section 552.130 of the Government Code. In either instance, the department must release the remaining unmarked information.³

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 563878

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Pursuant to section 552.023 of the Government Code, the requestor has a special right of access to her motor vehicle record information being released. *See* Gov't Code § 552.023. If the department receives a request for this information from a different requestor, the department is authorized to redact this information under section 552.130(c) without the necessity of seeking a decision from the attorney general. *See id.* § 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).