



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 17, 2015

Ms. Judith N. Benton
Assistant City Attorney
Legal Services
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2015-14602

Dear Ms. Benton:

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# 571946 (City of Waco Reference #: LGL-15-133).

The Waco Police Department (the "department") received a request for specified police reports involving a named individual and a specified address. 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 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 common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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). We note addresses and phone

numbers of members of the public are generally not highly intimate or embarrassing. *See id.* at 7 (home addresses and telephone numbers not protected under privacy). Generally, only highly intimate information that implicates 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, police report number 12-24780 reveals the requestor knows the identity of the individual involved as well as the nature of the information in the submitted report. 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. Thus, police report number 12-24780 is subject to common-law privacy. Further, portions of the remaining information, which we marked, meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor may be the spouse of the individual whose information is at issue. Therefore, if the requestor is acting as an authorized representative of the individual at issue, then the requestor has a right of access to the individual at issue's private information pursuant to section 552.023 of the Government Code. *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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, police report number 12-24780 and the remaining information we marked may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as an authorized representative of the individual at issue, then the department must withhold police report number 12-24780 and the remaining information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We note portions of the remaining information do not identify an individual. Thus, this information does not implicate an individual's privacy interests. Further, the department has failed to demonstrate any of the remaining information is highly intimate or embarrassing information and not of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, 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 *See Gov't Code* § 552.130. We note, however, section 552.130 is designed to protect the privacy of individuals. Accordingly, the requestor has a right of access to her own driver's license information and it may not be withheld from

¹The 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).

her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Further, if the requestor is acting as the authorized representative of the individual at issue, then the department may not withhold the motor vehicle record information pertaining to this individual from this requestor under section 552.130. If the requestor is not acting as the individual at issue's authorized representative, then the department must withhold the motor vehicle record information we have marked under section 552.130.

In summary, if the requestor is not acting as an authorized representative of the individual at issue, then the department must withhold police report number 12-24780 and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information we have marked under section 552.130. The remaining information must be released.

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,

A handwritten signature in cursive script that reads "Cole Hutchison".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/som

Ref: ID# 571946

Enc. Submitted documents

c: Requestor
(w/o enclosures)