



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 3, 2003

Chief Don Hatcher
Leander Police Department
P.O. Box 319
Leander, Texas 78646-0319

OR2003-2260

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178831.

The City of Leander Police Department (the "department") received a request for a specific police incident report. You state that you have released the basic front page information from the incident report. You claim, however, that portions of the remaining information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision No. 455

(1987) (prescription drugs, illnesses, operations, and physical handicaps), identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon reviewing the submitted information, we agree that it contains information that is highly intimate or embarrassing and of no legitimate public concern. We note, however, that you have marked the subject's date of birth as confidential. This information is not highly intimate or embarrassing and therefore is not confidential under common-law privacy. You must withhold those portions of the documents that we have marked under section 552.101 in conjunction with common-law privacy.

We further note that the submitted materials contain information that is confidential under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked the Texas driver's license information that you must withhold under section 552.130. We note that the requestor's Texas driver's license information also appears in the submitted documents. Under section 552.023 of the Government Code, 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. Gov't Code § 552.023(a). Section 552.130 is designed to protect the individual to whom the information relates. The requestor has a special right of access under section 552.023 to confidential information relating to her.¹ Therefore, you must release the requestor's own information to the requestor.

Finally, we note that you argue that social security numbers in the submitted documents are confidential. However, upon review of the submitted documents, we conclude that they do not contain any social security numbers. Therefore, this ruling does not address the confidentiality of social security numbers.

¹In this instance, the requestor has a special right of access under section 552.023 of the Government Code to her own information. We note, however, that should the department receive another request for this same information from a person who would not have a special right of access to it, the department should resubmit this same information and request another ruling.

In summary, we have marked information under section 552.101 in conjunction with common-law privacy that you must withhold. We have also marked information under section 552.130 that you must withhold. You must release the remaining information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

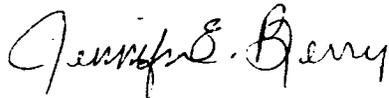
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Jennifer E. Berry". The signature is written in a cursive style with a large initial "J" and "B".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 178831

Enc: Submitted documents

c: Ms. Adrienne Smith
7430 Tetelia Drive
Houston, Texas 78641
(w/o enclosures)