



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 2, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2003-4558

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 183705.

The Austin Police Department (the "Department") received a request for a copy of the full report pertaining to case number 03-0871411. You assert the requested information is excepted from disclosure under section 552.101 of the Government Code. Also, we acknowledge receipt of the requestor's comments as permitted by the Act. See Gov't Code § 552.304 (permitting interested third party to submit comments explaining why information should or should not be released). We reviewed the information you submitted and considered the exception you claim.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information when (1) it contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). 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. *Indus. Found.*, 540 S.W.2d at 683. Based on our review of the submitted information, we find it contains highly intimate or embarrassing facts, which warrant protection under common-law privacy. In addition, the public does not have a legitimate interest in the information. Therefore, we conclude the Department must withhold the information we have marked under section 552.101 of the Government Code and common-law privacy.

Next, we note the submitted documents contain information subject to section 552.130 of the Government Code. This provision excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130*. In this case, the submitted information contains a driver's license number, which we have marked, that the Department must withhold under section 552.130 of the Government Code.

In summary, the Department must withhold the information we have marked under section 552.101 and common-law privacy. Also, the Department must withhold the driver's license number we have marked under section 552.130 of the Government Code. The Department must release the remainder of the report 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 183705

Enc: Submitted documents

c: Mr. Michael Delyea
7408 Sherwood Road
Austin, Texas 78745
(w/o enclosures)