ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2005

Ms. Sandra Gentry
Administrative Support II
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2005-10733

Dear Ms. Gentry:

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# 237187.

The Baytown Police Department (the "department") received a request for a specified incident report. You state that the department will redact social security numbers pursuant to section 552.147 of the Government Code.[1] You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions 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. This section encompasses the doctrine of common law privacy. Common law privacy protects information that is 1) highly intimate or embarrassing, such that its release 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 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas

[1]We note that section 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.

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. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical disabilities). The information that we have marked must be withheld under section 552.101 in conjunction with common law privacy.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides the following:

> (a) Information is excepted from the requirements 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[.]

Gov't Code § 552.130(a). We agree that the Texas motor vehicle record information you have highlighted in pink is confidential under section 552.130.

You also note that the remaining information contains a credit card number. Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Therefore, you must withhold the credit card number that you have highlighted in orange under section 552.136.

Finally, we note that the submitted information reflects that the requestor is the spouse of the individual to whom some of the submitted information pertains. As such, the requestor may have a special right of access to some of the information you have marked. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is seeking the submitted information on behalf of her spouse, pursuant to section 552.023, the requestor has a special right of access information that is otherwise confidential under sections 552.130, 552.136, and 552.147 of the Government Code. We have marked the information to which the requestor may have a right of access. To the extent the requestor has a right of access to the information we have marked, the department must release it to her.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common law privacy. The driver's license numbers that you have highlighted in pink must be withheld under section 552.130 of the Government Code. The credit card number that you have highlighted in orange must be withheld under section 552.136 of the Government Code. However, if the requestor has a special right of access to her husband's information under section 552.023 of the Government Code, the information we have marked under must be released to the requestor. The remaining submitted information must be released 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/segh

Ref: ID# 237387

Enc. Submitted documents

c: Ms. Shelley Simien
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Baytown, Texas 77521
(w/o enclosures)