



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2006

Ms. Meredith Ladd
Mr. Trenton Nichols
Brown & Hofmeister, L.L.P.
740 East Cambell Road, Suite 800
Richardson, Texas 75081

OR2006-04547

Dear Ms. Ladd and Mr. Nichols:

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# 248130.

The City of McKinney and the McKinney Police Department (collectively the "city"), which you represent, received three requests for information pertaining to a specified case. You claim that the requested information is 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." Section 552.101 encompasses the doctrine of common law privacy, which 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. *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 demonstrated. *Id.* at 681-82. 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. *Id.* at 683. In this instance, the submitted documents contain information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. In most cases, the city would be allowed to withhold only this information. In this instance, however, the requestors know the identity of the individual to whom the information relates as well as the nature of the information. Therefore, withholding only certain details of the incident from the requestors would not preserve the individual's common law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we determine that the submitted documents are confidential in their entirety under the doctrine of common law privacy. Therefore, the submitted documents must be withheld under section 552.101 of the Government Code from the first two requestors. However, we note that the third requestor is the individual's insurance company. As such, this requestor may have a right of access to some of the submitted information under section 552.023 of the Government Code. Section 552.023 provides a person or a person's authorized representative a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. In this instance, it is not clear that the requesting insurance company is the individual's authorized representative. Therefore, we are forced to rule conditionally.

If the requesting insurance company is not the individual's authorized representative, then it does not possess a right of access under section 552.023 of the Government Code, and the submitted documents must be withheld in their entirety under section 552.101 of the Government Code. However, if the requesting insurance company is the individual's authorized representative and has a right of access under section 552.023, then the submitted documents may not be withheld under section 552.101. Nevertheless, the submitted documents contain driver's license numbers and social security numbers which do not pertain to the individual at issue and to which the insurance company's right of access is not applicable. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[,]" while section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. These driver's license numbers and social security numbers, which we have marked, must be withheld under sections 552.130 and 552.147, respectively, while the remaining information must be released to the insurance company.

In summary, the submitted documents must be withheld from the first two requestors under section 552.101 of the Government Code in conjunction with the doctrine of common law privacy. If the requesting insurance company does not have a right of access under section 552.023 of the Government Code, then the submitted documents must be withheld in their entirety from the insurance company as well. However, if the insurance company does possess a right of access under section 552.023, then the submitted documents must be

released to the insurance company, with the driver's license numbers and social security numbers we have marked under sections 552.130 and 552.147 of the Government Code redacted.

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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 248130

Enc. Submitted documents

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