



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2006

Ms. Cary Grace  
Assistant City Attorney  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-8828

OR2006-08585

Dear Ms. Grace:

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# 255678.

The Austin Police Department (the "department") received a request for two specified incident reports. 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 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 (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). The types 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 addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are 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 handicaps). Generally, only highly intimate information that implicates the privacy of an individual must

be withheld from public disclosure. However, in instances of sexual assault or suicide, where it is demonstrated that the requestor knows the identity of the victim, as well as the nature of the incident, the entire report must be withheld to protect the victim's privacy. Here, although you seek to withhold the incident report contained in Exhibit A in its entirety, you have not demonstrated, nor does the report reflect, that this is a situation where the entire report must be withheld on the basis of common law privacy. Therefore, after reviewing your arguments and the incident report at issue, we determine that the department must withhold the information we have marked under section 552.101 in conjunction with common law privacy. Additionally, we have marked information in Exhibit B that must be withheld under common law privacy.

We also note that Exhibit A contains Texas motor vehicle record information. 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." Gov't Code § 552.130. Accordingly, the department must withhold the driver's license number we have marked pursuant to section 552.130. We note that Exhibit A also contains the requestor's Texas-issued driver's license number. Because section 552.130 protects individual privacy interests, the requestor has a special right of access under section 552.023 of the Government Code to his own Texas-issued driver's license and motor vehicle information. *See* Gov't Code § 552.023 (person has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest).

In summary, the department must withhold: 1) the information we have marked in Exhibits A and B pursuant to section 552.101 of the Government Code in conjunction with common law privacy; and 2) the driver's license number we have marked in Exhibit A pursuant to section 552.130 of the Government Code. The remaining 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,



Candice M. De La Garza  
Assistant Attorney General  
Open Records Division

CMD/krl

Ref: ID# 255678

Enc. Submitted documents

c: Mr. Clarence J. Bibby, Jr.  
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Pflugerville, Texas 78660  
(w/o enclosures)