

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 24, 2006

Mr. Steven D. Monté  
Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2006-12576

Dear Mr. Monté:

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# 262727.

The Richardson Police Department (the "department") received a request for a particular incident report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 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 from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential under 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 169 (1977), this office recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy on a showing of "special circumstances." This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." Open

Records Decision No. 169 at 6. “Special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* You seek to withhold the entire report under “special circumstances”. Although the department has submitted arguments explaining why it does not believe that this information is of any legitimate public interest, you have not submitted any arguments explaining how releasing the report in its entirety would likely cause someone to face imminent danger of harm or death. Accordingly, the submitted report may not be withheld in its entirety under “special circumstances.” However, we note that the release of a portion of the report may cause someone to face imminent danger of harm. This information, which we have marked, must be withheld under section 552.101 in conjunction with common-law privacy. We have also marked additional information that is otherwise confidential under the doctrine of common-law privacy. *See* Open Records Decision No. 455 (1987) (stating information related to illnesses is excepted from public disclosure).

Next, you state that the submitted information is excepted from disclosure under section 552.108(a)(2). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted information is a record of the department that relates to an investigation that has not resulted in conviction or deferred adjudication. Based on your argument, you have not shown that this report pertains to a case that concluded in a final result. Therefore, you may not withhold any information under section 552.108.

Next, we address your arguments 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[.]

Gov’t Code § 552.130(a)(1). Thus, the department must withhold the Texas driver’s license information marked under section 552.130.

The incident report also contains an e-mail address that is excepted from disclosure under section 552.137 of the Government Code, which requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See* Gov’t Code § 552.137 (b). You do not inform us that the owner of the e-mail address has affirmatively

consented to its release. Therefore, the department must withhold the e-mail address we have marked under section 552.137.

In summary, you must withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy, the Texas driver's license marked information under section 552.130, and the e-mail address marked under section 552.137. You must release the remaining information.

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).

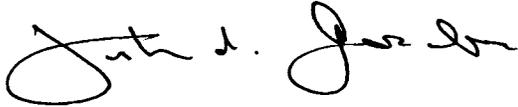
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "Justin D. Gordon". The signature is fluid and cursive, with the first name "Justin" and last name "Gordon" clearly legible.

Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/sdk

Ref: ID# 262727

Enc. Submitted documents

c: Alneemi Fakhraddin  
1137 Midway Drive  
Richardson, Texas 75081  
(w/o enclosures)

AUG 04 2008 EM

At 8:50 A.M.  
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GV-06-002336

CITY OF RICHARDSON, Plaintiff,	§	IN THE DISTRICT COURT OF
	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, ATTORNEY GENERAL, Defendant.	§	345 <sup>th</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff City of Richardson, and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2006). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Alneemi Fakhraddin, was sent reasonable notice of this setting and of the parties' agreement that Richardson must withhold the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

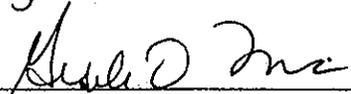
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, missing person report #06-066451, is excepted from disclosure by Tex. Gov't Code § 552.108(a)(2);
2. Richardson may withhold the information at issue from the requestor;

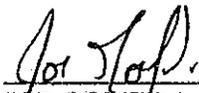
3. All costs of court are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and

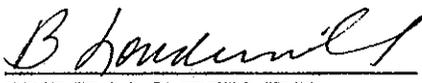
Defendant and is a final judgment.

SIGNED this the 4 day of August, 2008.

  
\_\_\_\_\_  
PRESIDING JUDGE

APPROVED:

  
\_\_\_\_\_  
JOE GORFIDA  
Nichols, Jackson, Dillard, Hager  
& Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201  
Telephone: (214) 965-9900  
Fax: (214) 965-0010  
State Bar No. 18664300  
ATTORNEY FOR PLAINTIFF

  
\_\_\_\_\_  
BRENDA LOUDERMILK  
Chief, Open Records Litigation  
Office of the Attorney General  
Administrative Law Division  
P.O. Box 12548  
Austin, Texas 78711-2548  
Telephone: (512) 475-4292  
Fax: (512) 320-0167  
State Bar No. 12585600  
ATTORNEY FOR DEFENDANT