



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2006

Ms. Christy Drake-Adams
Bovey, Akers Bojorquez, L.L.P.
Legal Counsel for The City of Brenham
12325 Hymeadow Drive
Suite 2-100
Austin, Texas 78750

OR2006-12789

Dear Ms. Drake-Adams:

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# 263484.

The City of Brenham (the "city"), which you represent, received a request for information related to a named individual and a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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.

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; however, in this instance the requestor knows the identity of the individual involved and the nature of the incident at issue. Withholding only certain details of the incident from the requestor would thus not preserve the individual's common-law right of privacy. Thus, the city must withhold the submitted information in its entirety pursuant to the common-law privacy principles incorporated by section 552.101 of the Government Code.

We note, however, that the requestor states and the documents demonstrate that she is the case worker of the identified individual. Thus, if the requestor has a special right of access to information regarding the named individual pursuant to section 552.023, the information may not be withheld from her under section 552.101 in conjunction with common law privacy.¹ In that case, we address your remaining arguments.

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 driver's license number you have marked must be withheld under section 552.130.

The submitted information also contains social security numbers. 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. Therefore, the city must withhold the social

¹See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); *see also* Gov't Code § 552.229(c) (individual who has been adjudicated incompetent to manage own personal affairs or for whom attorney ad litem has been appointed may consent to release of information under this section only by written authorization of designated legal guardian or attorney ad litem.); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning himself or herself). If the requestor has a special right of access to the information in this instance, and the department receives another request for this information from an individual other than the requestor, the department should resubmit the information to this office and request another ruling. *See* Gov't Code § 552.352 (providing criminal penalties for release of confidential information).

security numbers in the submitted information under section 552.147. However, one of the social security numbers is that of the named individual, and section 552.147 protects personal privacy. Therefore, if the requestor has a right of access pursuant to section 552.023, the city may not withhold the named individual's social security number from this requestor under section 552.147. Gov't Code § 552.023(a); Open Records Decision No. 481 at 4.

In summary, the city must withhold the submitted information in its entirety pursuant to the common-law privacy principles incorporated by section 552.101. However, if the requestor has a right of access pursuant to section 552.023, the city must withhold the marked driver's license number under section 552.130 and the social security number we have marked under section 552.147. In that case, the remaining information must be released to this 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).

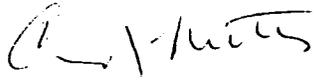
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 263484

Enc. Submitted documents

c: Ms. Toni L. Korthauer
D&S Residential Services
348 Stone Hill Drive, Suite 103
Brenham, Texas 77833
(w/o enclosures)