



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2007

Mr. Craig Magnuson
Attorney, Legal Department
City of Mansfield
1305 East Broad Street
Mansfield, Texas 76063

OR2007-13471

Dear Mr. Magnuson:

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# 292373.

The Mansfield Police Department (the "department") received a request for information relating to a specified incident. 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 have reviewed the information you submitted.

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 exception encompasses 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered to be intimate or 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. Generally, only highly intimate information that implicates the privacy of an individual is protected by common-law privacy. However, in

certain instances where it is demonstrated that the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, the requestor knows the identity of the individual involved as well as the nature of the information in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident would not preserve the common-law right to privacy of the individual involved. Accordingly, to protect the privacy of the individual involved, the submitted information is protected from public disclosure in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that the information identifies the requestor as the spouse of the individual involved. As such, the requestor may be the individual's authorized representative. If the requestor is the individual's authorized representative, then she has a special right of access under section 552.023 of the Government Code to information relating to the individual that the department is required to withhold from the public to protect his privacy. *See* Gov't Code § 552.023(a).¹ Thus, if the requestor is the authorized representative of the individual involved in the submitted information, then the information may not be withheld from her on privacy grounds under section 552.101. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

We note that the submitted documents contain the Texas driver's license number of the individual involved. 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.² *See* Gov't Code § 552.130(a)(1). Although a Texas driver's license number must be withheld from the public under section 552.130, this exception protects personal privacy. Thus, the requestor would also have a right of access to the individual's Texas driver's license number if she is his authorized representative. Gov't Code § 552.023(a); ORD 481 at 4.

In summary, the submitted information must be withheld from public disclosure in its entirety under section 552.101 of the Government Code in conjunction with common-law

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

privacy. The information must be released to this requestor, however, if she is the authorized representative of the individual involved.³

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).

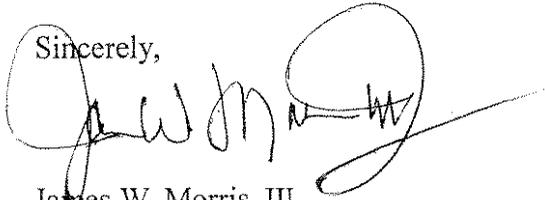
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

³We note that the submitted documents also contain the social security number of the individual involved. 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. The requestor also has a right, however, to the individual's social security number if she is his authorized representative. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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 'JWM', with a large, stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 292373

Enc: Submitted documents

c: Ms. Juanita Whitley
6 Chapel Hill Court
Mansfield, Texas 76063
(w/o enclosures)