



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2008

Mr. Bryan McWilliams
Assistant City Attorney
City of Amarillo
200 Southeast Third Avenue
Amarillo, Texas 79101-1514

OR2008-05853

Dear Mr. McWilliams:

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# 309636.

The Amarillo Police Department (the "department") received two requests for a specified offense report: the first from EPS, and the second for the spouse of the individual at issue in the report. The spouse also requested a related 9-1-1 call. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code, and indicate that some of the information is excepted under sections 552.130 and 552.147 of the Government Code. We have considered your arguments 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." 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 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. Generally, only highly intimate

information that implicates the privacy of an individual is withheld. 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.

The spouse 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 from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must generally withhold the submitted information in its entirety from the spouse requestor under common-law privacy.

The EPS requestor also knows the identity of the individual at issue; however, there is no indication that this requestor knows the nature of the information at issue. Therefore, the department must withhold from the EPS requestor the information we have marked under section 552.101 in conjunction with common-law privacy, but it may not withhold the remaining information from the EPS requestor under privacy.

The EPS requestor indicates that she is the authorized representative of the individual at issue, and the second requestor is the individual's spouse; however, you inform us that the department has not received any information establishing that either requestor represents the individual. Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or person's representative to whom information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a). Therefore, if either requestor is an authorized representative of the individual at issue, then that requestor has a right of access to the private information pertaining to the individual pursuant to section 552.023.

You have marked Texas driver's license numbers in the remaining information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information we have marked under section 552.130. However, to the extent that either requestor is the authorized representative of the individual at issue, then the individual's drivers license number must be released to that requestor pursuant to section 552.023. In addition, if the spouse requestor is the authorized representative of the individual at issue, then her driver's license number must also be released to her under section 552.023.

Finally, you have marked a social security number in the remaining information. 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. There is no indication that either requestor has access to this information pursuant to section 552.023;

therefore, the department may withhold the social security number in the submitted information under section 552.147.¹

To conclude, the department must withhold from the EPS requestor the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and it must withhold the submitted information in its entirety from the spouse requestor on the same ground. The department must also withhold the information we have marked section 552.130 of the Government Code. However, the department may not withhold the information subject to section 552.101 or 552.130 from a requestor who has a right of access to this information under section 552.023 of the Government Code. The department may withhold the social security under section 552.147 of the Government Code. The department 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

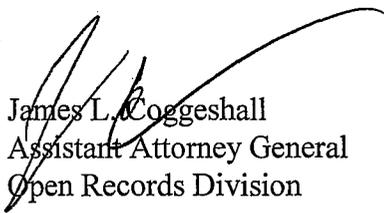
¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 309636

Enc. Submitted documents

c: Ms. Tiffeney Tigner
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