



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2008

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2008-13270

Dear Mr. Kelly:

~~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# 323900.~~

Texas A&M University (the "university") received a request for police records pertaining to a specified offense. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ However, some of the information you have redacted is the requestor's sister's social security number. In this instance, the requestor is requesting the information at issue on behalf of her sister. Although the university would be allowed to withhold this information from the public under section 552.147 of the Government Code, the requestor has a right of access to her sister's social security number. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated

¹We note 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 decision from this office under the Act.

when individual requests information concerning himself). Thus, the university may not withhold the requestor's sister's social security number from the requestor. The university may withhold the remaining social security numbers in the submitted information, not belonging to the requestor or her sister, pursuant to section 552.147 of the Government Code.

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. This exception encompasses the doctrine of common-law privacy and excepts from public disclosure private information about an individual if the information (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 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) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). However, we note there is generally a legitimate public interest in the details of a criminal investigation. *See Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to the public can be considered only in context of each particular case). Furthermore, we note information relating to public employees and public employment is generally a matter of legitimate public interest. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has legitimate interest in public employee's qualifications, work performance, and circumstances of employee's resignation or termination), 423 at 2 (1984) (scope of public employee privacy is narrow).

You seek to withhold photographs of the victim's injuries pursuant to the common-law right to privacy. Upon review, we find the photographs at issue constitute highly intimate or embarrassing information that is of no legitimate concern to the public. Therefore, the university must withhold the submitted photographs in Exhibit B, part 1 under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information protected by other statutes. Section 773.091 of the Health and Safety Code protected information relating to the provision of emergency medical services and provides in pertinent part:

- (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is

confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(a)-(c). However, section 773.091(g) provides

[t]he privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Id. § 773.091(g). We find section 773.091 is applicable to Exhibit B, part 2. Accordingly, except as provided by section 773.091(g), the university must withhold this information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Next, you claim portions of the remaining submitted information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 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[.]" Gov't Code § 552.130(a)(1). You have marked the information you contend is subject to section 552.130. However, we note some of the information you have marked pertains to the requestor's sister's driver's license. As stated above, the requestor has a right of access to her sister's private information. *See id.* § 552.023. Accordingly, the university must withhold only the Texas driver's license information we have marked under section 552.130 of the Government Code.

In summary, the university must withhold Exhibit B, part 1 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Except as provided by subsection 773.091(g), the university must withhold Exhibit B, part 2 under section 552.101 in conjunction with section 773.091 of the Health and Safety Code. The university must also

withhold the information we have marked under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.²

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). If the governmental body does not file suit over 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 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.

²Should the university receive another request for this same records from a person who would not have a special right of access to the private information, the university should resubmit this same information and request another ruling from this office. See Gov't Code §§ 552.301(a), .302.

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,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 323900

Enc. Submitted documents

c: Ms. Laura Rodriguez
216 Copper Falls Drive
Bryan, Texas 77806
(w/o enclosures)