



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 9, 2008

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

OR2008-16763

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# 329494.

Texas A&M University (the "university") received a request for information pertaining to a specified incident involving a named individual. You claim that the submitted information is 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.

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 section encompasses the common-law right of privacy, which protects information if it (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 that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information

or information indicating disabilities or specific illnesses. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where the requestor knows the identity of the individual at issue and the nature of the incident, the entire report must be withheld to protect the individual's privacy. Although you believe the submitted incident report may be confidential in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entire report must be withheld on the basis of common-law privacy. However, we agree that some of the submitted information is protected by common-law privacy. Accordingly, the university must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, the remaining information is not confidential under common-law privacy and may not be withheld under section 552.101 on that basis.

We note, however, that the requestor may be an authorized representative of the individual whose right to privacy is at issue. In the event that the requestor is this individual's authorized representative, then he has a special right of access to her private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a).<sup>1</sup> Therefore, to the extent the requestor is the authorized representative of the individual at issue and has a special right of access to the marked information, it may not be withheld from him under section 552.101 in conjunction with common-law privacy. However, to the extent the requestor does not have a special right of access, the marked information must be withheld pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 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). We have marked Texas issued driver's license numbers belonging to several people. However, section 552.130 also protects privacy interests. Thus, if the requestor is acting as the authorized representative of the named individual, he also has a right of access under section 552.023 to the named individual's driver's license information. *Id.* § 552.023(a). If the requestor is not acting as an authorized representative, he does not have a right of access to the named individual's driver's license information, and the university must withhold this information under section 552.130 of the Government Code. The university must also withhold the driver's

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<sup>1</sup>Section 552.023(a) provides that "[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." Gov't Code § 552.023(a).

license numbers that do not belong to the named individual pursuant to section 552.130 of the Government Code.

In summary, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. If, however, the requestor is acting as the authorized representative of the named individual, then the marked information pertaining to the named individual must be released to the requestor. The remaining information must be released.

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.

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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 329494

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)