



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 24, 2009

Mr. Gregory Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2009-03805

Dear Mr. Alicie:

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# 338030 (BPD case # 2008-53722).

The Baytown Police Department (the "department") received a request for information related to a specified incident. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.147 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 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. This office has found that 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) (illness from severe

emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we have marked the submitted information that is highly intimate or embarrassing and not of legitimate public concern. The marked information is protected by common-law privacy under section 552.101 of the Government Code.

We note, however, that the requestor is the spouse of the individual to whom the private information pertains. As such, the requestor may have a right of access to the marked information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If the requestor is acting as his spouse's authorized representative, then the requestor has a right of access to her private information pursuant to section 552.023, and the marked information may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as his spouse's authorized representative, then he does not have a right of access to her private information, and the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, you claim that the social security numbers you have highlighted in green are excepted from disclosure under section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department may withhold the green-highlighted social security numbers under section 552.147.¹

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor has a right of access to the information under section 552.023(b) of the Government Code. The department may withhold the social security numbers you have highlighted in green under section 552.147 of the Government Code. The remaining information must be released to the requestor.

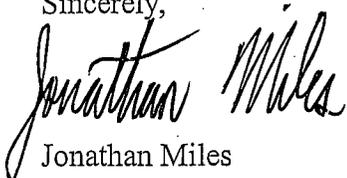
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

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.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 338030

Enc. Submitted documents

c: Requestor
(w/o enclosures)