



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2009

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

OR2009-05413

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# 340978 (BPD Case #2008-56935).

The Baytown Police Department (the "department") received a request for a specified incident report. You state that you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that 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.

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 information that other statutes make confidential. Section 724.018 of the Transportation Code provides that "[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's

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.

attorney.” Transp. Code § 724.018. Where a statute provides an individual with a special right of access to information, that information may not be withheld from that individual. See Open Records Decision Nos. 613 (1993), 623 (1994). You contend that because the requestor is neither the person whose breath specimen was analyzed nor that person’s attorney, the information you have highlighted in purple should not be released. Thus, you argue that release of this information would be a violation of section 724.018.

In Open Records Decision No. 478 (1987), this office interpreted the predecessor statute, section 3(e) of article 6701 1-5 of Vernon’s Texas Civil Statutes, as creating a special right of access for the person supplying the specimen; we concluded that the statute did not constitute a grant of confidentiality with regard to other persons. *Id.* at 2-3; see also Open Records Decision Nos. 658 (1998) (statutory confidentiality provision must be express), 465 (1987) (confidentiality requirement not to be implied from statutory structure). Therefore, the department may not withhold the information you have marked in purple under section 552.101 of the Government Code in conjunction with section 724.018 of the Transportation Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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 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 some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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 conclude that the information you have highlighted in yellow is intimate or embarrassing and of no legitimate public interest. Thus, this information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you claim that the information that you have highlighted in pink is 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 or a motor vehicle title or registration issued by an agency of this state. See Gov’t Code § 552.130(a)(1)-(2). We agree that the department must withhold the Texas motor vehicle record information you have highlighted in pink, and the additional information we have marked, under section 552.130.

In summary, the department must withhold the yellow-highlighted information under section 552.101 of the Government Code in conjunction with common-law privacy. The department

must withhold the pink-highlighted information, and the additional information we have marked, under section 552.130 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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 340978

Enc. Submitted documents

cc: Requestor
(w/o enclosures)