



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2009

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

OR2009-10841

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# 351181.

The Baytown Police Department (the "department") received a request for a specified incident report. 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 public 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 that (1) contains highly intimate or embarrassing information, 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 (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.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the

identity of the individual at issue and the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the submitted information reveals that the requestor knows the identity of the individual involved as well as the nature of the information in the report. Therefore, withholding only the individual's identity or certain details of the incident from the 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 under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note that the submitted information indicates that the individual to whom the marked information pertains is the requestor's spouse. If the requestor is the spouse's authorized representative, then he has a 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> If the requestor has a right of access under section 552.023, then the submitted information may not be withheld from him in its entirety on privacy grounds. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Conversely, if the requestor does not have a right of access under section 552.023, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent that the requestor is the authorized representative of his spouse, we will address whether any portion of the submitted information is otherwise excepted from disclosure under the Act.

You also raise section 552.130 of the Government Code, which 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 [or] a motor vehicle title or registration issued by an agency of this state [.]" Gov't Code § 552.130. Accordingly, the department must generally withhold the Texas motor vehicle information you have marked under section 552.130 of the Government Code. However, we note that section 552.130 is intended to protect privacy interests. Thus, as stated above, if the requestor is acting as his spouse's authorized representative, then any Texas motor vehicle information pertaining to his wife may not be withheld from him pursuant to section 552.130. *See id.* § 552.023.

In summary, if the requestor is not the authorized representative of his spouse, the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with common law privacy. If the requestor is acting as his wife's authorized representative, the department must withhold only

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<sup>1</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

the information marked under section 552.130 of the Government Code that does not pertain to his wife, and the remaining information must be released.

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](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,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/rl

Ref: ID#351181

Enc. Submitted documents

c: Requestor  
(w/o enclosures)