



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 5, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901

OR2009-15761

Dear Ms. Sandoval-Walker:

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# 360696.

The El Paso Police Department (the "department") received a request for information pertaining to a specified case number. You claim that some of the submitted information is exempted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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, 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,

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<sup>1</sup>We note that although you do not raise section 552.130 of the Government Code in your brief, you have marked portions of the submitted information under this exception. Thus, we understand you to raise section 552.130.

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 No. 470 (1987) (illness from severe emotional and job-related stress). Upon review, we agree that the information you have marked, in addition to the information we have marked, is highly intimate and embarrassing and not of legitimate public interest. Thus, this information must be withheld under section 552.101 in conjunction with common-law privacy. However, because no portion of the remaining information is highly intimate or embarrassing, we conclude that no portion of it may be withheld under section 552.101 in conjunction with common-law privacy.

You also raise section 552.101 in conjunction with constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find you have not demonstrated how any of the information falls within the zones of privacy. Thus, no portion of the remaining information may be withheld under section 552.101 in conjunction with constitutional privacy.

Section 552.130 of the Government Code 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. Upon review, we agree the department must withhold the information you have marked under section 552.130 of the Government Code.

Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>2</sup> *Id.* § 552.147. Therefore, the department may withhold the social security numbers you have marked under section 552.147 of the Government Code.

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<sup>2</sup>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. *See* Gov't Code § 552.147(b).

In summary, the department must withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information you have marked under section 552.130 of the Government Code. The department may withhold the social security numbers you have marked under section 552.147 of the Government Code. 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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 360696

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)