



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2010

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
402 North Second Street
Killeen, Texas 76541-5298

OR2010-00380

Dear Ms. Mapes:

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# 366681 (City of Killeen ID # W002524).

The Killeen Police Department (the "department") received a request for the incident report pertaining to case number 09-13566. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. 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 involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the requestor knows the identity of the individual involved as well as the nature of the incident in the submitted 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.

We note, however, that the requestor may be the authorized representative of the individual whose private information is at issue. Under section 552.023, a person or 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 is protected from public disclosure by laws intended to protect the person's privacy interests. If the requestor is the individual's authorized representative, she has a right of access to the individual's private information, and that information may not be withheld from this requestor under section 552.101 in conjunction with common-law privacy. If the requestor is not the individual's authorized representative, then 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.

To the extent the requestor is the individual's authorized representative, we note the submitted information contains information subject to sections 552.130 and 552.137 of the Government Code.¹ Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). Accordingly, if the requestor is an authorized representative for the individual at issue, the department must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c). Thus, if the requestor is as an authorized representative for the individual at issue, the department must withhold the e-mail address we have marked pursuant to section 552.137 unless the department receives consent for its release. *See id.* § 552.137(b).²

In summary, unless the requestor is an authorized representative for the individual listed in the report, the department must withhold the submitted report in its entirety under section 552.101 in conjunction with common-law privacy. If the requestor is an authorized representative of the individual at issue, then the department must withhold the driver's license numbers we have marked under section 552.130 of the Government Code and the e-

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's licenses under section 552.130 of the Government Code and personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

mail address we have marked under section 552.137 of the Government Code. The remaining information must be released.³

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, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 366681

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that if the information at issue is not withheld in its entirety, the requestor has a special right of access to some of the requested information in this instance. Gov't Code § 552.023(a) (person has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Should the department receive another request for these same records from a person who would not have a right of access to the requestor's private information, the department should resubmit these records and request another decision. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).