



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 18, 2010

Ms. Candice De La Garza
Assistant City Attorney
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2010-02482

Dear Ms. De La Garza:

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# 370656.

The Houston Police Department (the "department") received a request for a specified incident report. You claim that the requested 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 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 common-law right of privacy, which protects information if it (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 or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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 that 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 submitted information reflects that the requestor knows the identity of the individual involved as well as the nature of the incident. Thus, withholding only the identity of the individual involved or certain details of the incident from the requestor would not preserve the individual's common-law right to privacy. Therefore, to protect the privacy of the individual to whom the information pertains, 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.

However, the requestor is the spouse of the person whose privacy rights are implicated and may be acting as a representative of that individual. Section 552.023(a) of the Government Code states 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 is protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code § 552.023(a). Therefore, if the requestor is not the authorized representative of the individual at issue, the department must withhold the submitted information in its entirety. On the other hand, if the requestor is the authorized representative of the individual at issue, the department may not withhold any of the requested information under section 552.101 of the Government Code in conjunction with common-law privacy. *See id.*

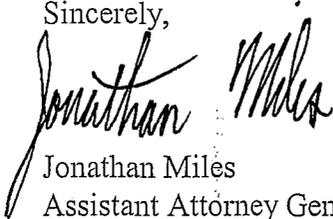
To the extent the requestor is the individual's authorized representative, we address your remaining argument. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See id.* § 552.130(a)(1). You assert that the driver's license number you have marked in the submitted information is excepted under section 552.130 of the Government Code. Section 552.130, however, protects privacy interests. In this case, the driver's license number at issue belongs to the requestor, who has a right of access under section 552.023 to her own driver's license number. *Id.* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles). Therefore, the requestor's driver's license number may not be withheld under section 552.130 of the Government Code.

In summary, if the requestor is not the authorized representative of the individual at issue, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the authorized representative of the individual at issue, the department may not withhold any of the requested information and must release it 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, toll free, at (888) 672-6787.

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# 370656

Enc. Submitted documents

c: Requestor
(w/o enclosures)