



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2010

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2010-03258

Dear Mr. Mann:

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# 372185 (Garland ID#s GCA09-0963 and GCA09-0969).

The Garland Police Department (the "department") received two requests for a specified incident report. We note that you have redacted a Texas driver's license number under section 552.130 of the Government Code pursuant to Open Record Decision No. 684 (2009).¹ You claim that the submitted information is exempted 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 exempts 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, 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

¹ This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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 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 Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). 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 submitted information must be withheld in its entirety to protect the individual's privacy. Although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entire report must be withheld on the basis of common-law privacy. However, we agree that portions of the information in the submitted incident report are highly intimate or embarrassing and not of legitimate public interest. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that one of the requestors is the attorney for the stepfather of the individual whose privacy interest is at issue. Therefore, if this requestor is the authorized representative of the individual at issue, then pursuant to section 552.023 of the Government Code, this requestor has a right of access to the information at issue, and the department may not withhold any information from him on the basis of common-law privacy. See Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If this requestor does not have a right of access to this information pursuant to section 552.023, then the department must withhold this information from him under section 552.101 in conjunction with common-law privacy. The remaining information must be released to both requestors.

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, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 372185

Enc. Submitted documents

c: Requestor
(w/o enclosures)