



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2010

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

OR2010-07729

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# 380931 (GCA 10-0200).

The Garland Police Department (the "department") received a request for an arrest record and police report that occurred at a specified date involving a named individual. 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, 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. *See id.* at 683. Further, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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 entire report must

be withheld to protect the individual's privacy. Here, you seek to withhold the information at issue in its entirety because you assert the requestor knows the identity of the subject individual. However, you have not demonstrated, nor does it appear, that this is a situation where the information at issue must be withheld in its entirety on the basis of common-law privacy. We agree that some of the submitted information is highly intimate or embarrassing and not of legitimate concern to the public. Accordingly, the department must withhold the information you have marked under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, no portion of the remaining information may be withheld under section 552.101. We note, however, that the requestor is the spouse of the individual to whom the submitted information pertains and may have a right of access to this information. *See* Gov't Code § 552.023(b) ("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"). Thus, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to the submitted information pursuant to section 552.023(b), and this information may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of her spouse, then the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We understand 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 Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). However, we note that the Texas driver's license number at issue belongs to the requestor's spouse. As such, the requestor has a right of access to her spouse's Texas driver's license number pursuant to section 552.023, if she is acting as his authorized representative. *See id* § 552.023 (person or person's authorized representative has a special right of access to information that relates to a person that are protected from public disclosure by laws intended to protect that person's privacy interest). Thus, if the requestor is seeking the information as the authorized representative of her spouse, then she has a right of access to his Texas driver's license number, and the department may not withhold this information under section 552.130. If the requestor is not seeking the information as her spouse's authorized representative, then the department must withhold the Texas driver's license number you have redacted under section 552.130.

Further, we note you have redacted a social security number under section 552.147 of the Government Code. Section 552.147(b) of the Government Code authorizes a governmental

¹This 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.

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. *Id.* § 552.147. Section 552.147 is based on privacy concerns as well. Accordingly, pursuant to section 552.023, the requestor has a right of access to her spouse's social security number if the requestor is acting as his authorized representative, and the department may not withhold this information under section 552.147 of the Government Code. *See id.* § 552.023. If the requestor is not acting as the authorized representative of her spouse, then the department may withhold the social security number at issue under section 552.147.

In summary, if the requestor is not acting as the authorized representative of her spouse, then the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the Texas driver's license you have redacted under section 552.130 of the Government Code. Also, the department may withhold the social security number you have redacted under section 552.147 of the Government Code. If the requestor is acting as the authorized representative of her spouse, then the submitted information must be released in its entirety.²

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

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²We note this information contains confidential information to which the requestor may have a right of access. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

Ref: ID# 380931

Enc. Submitted documents

cc: Requestor
(w/o enclosures)