



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2010

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-08786

Dear Mr. Alicie:

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# 383117.

The Baytown Police Department (the "department") received a request for all documents related to case number 09-2107. You claim the marked portions of the submitted information are excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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). However, the public has a legitimate interest in knowing the details of

a crime. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Determinations under common-law privacy must be made on a case-by-case basis. *See Open Records Decision No. 373 at 4* (1983); 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case).

The submitted report consists of the department’s investigation of accusations involving the theft of a physician’s prescription pad and the subsequent fraudulent use of that pad to obtain prescription medications. Upon review, we marked the portions of the submitted report that reveal information related to prescribed drugs that are not alleged to have been illegally prescribed. We find this information reveals specific medical details about identified individuals that are highly intimate or embarrassing and of no legitimate public interest. *See ORD 455*. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining prescription drug information in the marked documents directly pertains to the crimes alleged in the report, and thus is of legitimate public interest. *See Lowe*, 487 F.3d at 250. Additionally, you have not explained how the other information in the marked documents is highly intimate or embarrassing. Thus, the department may not withhold any of the remaining information you marked under section 552.101 in conjunction with common-law privacy.

Next, you claim the partial social security numbers you have marked in the submitted report are excepted from disclosure under section 552.147 of the Government Code. This section provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Accordingly, the department may withhold the partial social security numbers you have marked pursuant to section 552.147 of the Government Code.¹

In summary, the department must withhold the prescription drug information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, and may withhold the partial social security numbers you 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.

¹We note that 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. Gov’t Code § 552.147(b).

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 "Bob Davis", with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 383117

Enc. Submitted documents

cc: Requestor
(w/o enclosures)