



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2010

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-10512

Dear Ms. McClellan:

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# 386742 (DPD ORR No. 2010-4063).

The Dallas Police Department (the "department") received a request for the internal affairs report pertaining to the requestor's complaint against a named police officer. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The type of information considered intimate or 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. 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). We agree most of the information you marked constitutes highly intimate or embarrassing information that is not of legitimate public interest. We have marked this information. However, some of the remaining information you marked is not highly intimate or embarrassing and the rest of the information you marked is of legitimate public interest. As such, the department may not withhold the remaining information you marked under section 552.101 on the basis of common-law privacy.

We note, however, the requestor is the spouse of the individual whose privacy interests are implicated and may have a right of access to the information we marked. *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 information we marked pursuant to section 552.023(b), and it 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 we marked under section 552.101 in conjunction with common-law privacy.

You assert portions of the remaining information are excepted under section 552.136 of the Government Code. Section 552.136 provides "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You inform us an employee's identification number is used in conjunction with one additional digit in order to access the employee's credit union account. Thus, we find the department must withhold the employee identification numbers you have marked under section 552.136.

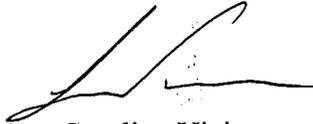
In summary, if the requestor is not acting as her spouse's authorized representative, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code. The department must release the remaining information.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 386742

Enc. Submitted documents

c: Requestor
(w/o enclosures)