



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 7, 2010

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

OR2010-15290

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# 396107.

The Baytown Police Department (the "department") received three requests from the same requestor for information pertaining to: (1) case number 10-30090; (2) a complaint filed on July 23, 2010 by a named individual; and (3) a complaint filed by the requestor on the morning of July 24, 2010. You state the department has released the requested information pertaining to the July 24, 2010 complaint filed by the requestor with social security numbers redacted pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim 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 common-law right to 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

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<sup>1</sup>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. *See* Gov't Code § 552.147(b).

public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. See *id.* at 681-82. Determinations under common-law privacy must be made on a case-by-case basis. See Open Records Decision No. 373 at 4 (1983); *Indus. Found.*, 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 types 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. See 540 S.W.2d at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances information must be withheld in its entirety to protect the individual's privacy.

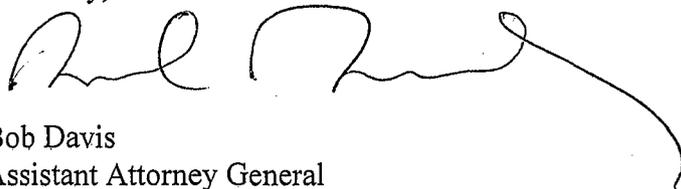
In this instance, you seek to withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. However, you have not provided any arguments explaining how this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. See Gov't Code § 552.301(e)(1)(A) (governmental body must provide reasons why the stated exceptions apply). We note portions of the submitted information are highly intimate or embarrassing and not of legitimate public interest. We have marked these portions of the submitted information, which the department must withhold under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find there is a legitimate public interest in the remaining portions of the submitted information, as they pertain to the details of a criminal investigation and the conclusions reached in such investigation. See Open Records Decision No. 400 at 4 (1983). See generally *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)), *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (public's legitimate interest in community affairs is particularly sensitive and important as applied to police activity). Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure, 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.

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](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, sweeping tail extending to the right.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tp

Ref: ID# 396107

Enc. Submitted documents

c: Requestor  
(w/o enclosures)