



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2010

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

OR2010-16098

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# 397816.

The Baytown Police Department (the "department") received two requests for information related to a specified incident. The second request also seeks all additional reports related to that requestor. You state you have released some of the information responsive to the second request. You also state you will redact social security numbers and partial social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault,

¹Section 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. See Gov't Code § 552.147(b).

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 also 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). You have marked medical information belonging to both requestors you claim is protected by common-law privacy. We agree the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Section 552.023(a) provides that “[a] 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.” *See* Gov’t Code § 552.023(a). Thus, the first requestor has a right of access to his medical information and the second requestor has a right of access to his medical information that would ordinarily be withheld to protect their common-law privacy interests. *See id.*; 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). Consequently, the medical information you have marked belonging to the first requestor may not be withheld from the first requestor under section 552.101 in conjunction with common-law privacy. Likewise, the medical information you have marked belonging to the second requestor may not be withheld from the second requestor under section 552.101 in conjunction with common-law privacy. However, the department must withhold each requestor’s medical information from the other requestor under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual’s autonomy within “zones of privacy,” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In Open Records Decision No. 430 (1985), our office determined a list of inmate visitors is protected by constitutional privacy because people have a First Amendment right to correspond with prisoners, and the release of that information would threaten that right. Although one of the requestors is the inmate whose visitor information is at issue, he does not have a right of access to this information under section 552.023 of the Government Code because the constitutional rights of another party are also implicated. *See* ORD 430. Therefore, we find you have demonstrated a portion of the inmate visitor information you have marked is protected by constitutional

privacy. However, we find you have failed to demonstrate the remaining inmate visitor information, which we have marked for release, is protected under the doctrine of constitutional privacy, and it may not be withheld on that basis. Accordingly, with the exception of the information have marked for release, the department must withhold the inmate visitor information you have marked under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal investigation. Based upon this representation and our review, we conclude the release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d. 559 (Tex. 1976). Thus, we agree the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.²

You assert some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license, driver’s license or permit issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1). You have marked a Texas driver’s license number. We note, however, section 552.130 protects privacy interests. In this instance, the marked information belongs to the second requestor, who, as you acknowledge, has a right of access under section 552.023 of the Government Code to his own Texas motor vehicle record information. *Id.* § 552.023(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds information is considered confidential under privacy principles). Therefore, the second requestor’s Texas driver’s license number may not be withheld from him under section 552.130 of the Government Code. However, this information must be withheld from the first requestor under section 552.130 of the Government Code.³

²As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

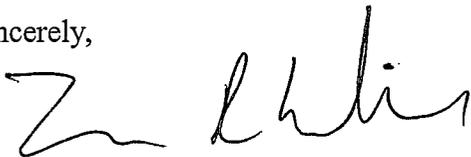
³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the department must withhold the marked medical information belonging to the first requestor from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the marked medical information belonging to the second requestor from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with constitutional privacy. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the Texas driver's license number you have marked from the first requestor under section 552.130 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.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 397816

Enc. Submitted documents

c: Requestors
(w/o enclosures)