



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2010

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

OR2010-17889

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# 401411.

The Baytown Police Department (the "department") received two requests for report number 10-36021, pertaining to an accident involving the first requestor's client and the second requestor. You state the department will redact the partial social security numbers you marked pursuant to section 552.147 of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 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 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. *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,

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 under the Act. 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 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). Upon review, we agree the information you marked reveals medical details and other information about individuals identified in the report that is highly intimate or embarrassing and of no legitimate interest. However, we note the first requestor states she represents one individual whose private medical information is at issue. As such, the first requestor has a right of access to information that would be protected from public disclosure for the purpose of protecting her client's own privacy interests. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, the information that pertains to the first requestor's client may not be withheld from the first requestor, but the department must withhold this information from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the remaining information you marked from both requestors under section 552.101 in conjunction with common-law privacy.

You claim the Texas motor vehicle record information you marked is excepted under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). We have marked the Texas motor vehicle record information that is subject to section 552.130. Some marked information pertains to the first requestor's client and other marked information pertains to the second requestor. We note section 552.130 is designed to protect the privacy of individuals. Therefore, pursuant to section 552.023, the first requestor has a right of access to Texas motor vehicle record information pertaining to her client, and the second requestor has a right of access to Texas motor vehicle record information pertaining to herself. However, the first requestor's client's information must be withheld from the second requestor under section 552.130. Similarly, the second requestor's information must be withheld from the first requestor under section 552.130. The Texas motor vehicle information we marked that does not pertain to either the first requestor's client or the second requestor must be withheld from both requestors under section 552.130.

The submitted information also includes the first requestor's client's insurance policy number. Section 552.136(b) states that "[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"). This office has determined insurance policy numbers are "access device" numbers for purposes of section 552.136. As with section 552.130, section 552.136 protects the privacy interests of individuals. Therefore, pursuant to section 552.023 the insurance policy number you marked may not be withheld

from the first requestor. However, we agree this number must be withheld from the second requestor under section 552.136 of the Government Code.

In summary, the department must withhold from the second requestor the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the remaining information you marked under section 552.101 in conjunction with common-law privacy from both requestors. The department must withhold from the second requestor the information we marked under section 552.130 of the Government Code that pertains to the first requestor's client, and must withhold from the first requestor the information we marked under section 552.130 that pertains to the second requestor. The information we marked that does not pertain to either requestor must be withheld from both requestors under section 552.130 of the Government Code. The insurance policy number you marked must be withheld from the second requestor under section 552.136 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 401411

Enc. Submitted documents

c: Requestor
(w/o enclosures)