



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 23, 2010

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

OR2010-19345

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# 404100.

The Baytown Police Department (the "department") received a request for a specified police report. You claim that the requested 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 of the Government Code encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides in relevant part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). You assert the submitted information is excepted from disclosure under section 58.007 of the Family Code. We note, however, section 58.007 does not make information relating to traffic offenses confidential. *See id.* §§ 51.02(16) (defining traffic offense), 51.03(a) (delinquent conduct does not include traffic offense), 51.03(b) (conduct indicating need for supervision does not include traffic offense), 58.007(b) (section applies to records and files relating to child who is party to proceeding under title 3 of Family Code). Because the information at issue does not involve delinquent conduct or conduct indicating a need for supervision for purposes of the Family Code, we conclude that section 58.007 is not applicable to this information. Consequently, the department may not withhold any portion of the information at issue under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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 satisfied. *Id.* at 681-82. 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. *Id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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 find a portion of the submitted information, which we have marked, is highly intimate or embarrassing and of no legitimate concern to the public. However, we note in this instance the requestor may be the insurance provider of the individual whose private information is at issue. Section 552.023 of the Government Code provides “[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); *see also id.* § 552.023(b)

(governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning the individual). Thus, if this requestor is acting as the subject individual's authorized representative, she has a right of access to information pertaining to that individual that would ordinarily be excepted from disclosure under section 552.101 in conjunction with common-law privacy. Therefore, if the requestor is acting as the authorized representative of the individual whose private information is at issue, the department may not withhold the information at issue from this requestor on the basis of common-law privacy. Otherwise, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Some of the remaining information is subject to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.<sup>1</sup> Gov't Code § 552.130(a)(1), (2). We note that this exception does not encompass out-of-state motor vehicle information. We further note the requestor in this instance appears to represent the insurance provider of the owner of one of the vehicles listed in the submitted information. If this requestor is acting as the authorized representative of the insured party, she has a right of access to her insured's Texas motor vehicle record information. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). In this instance, it is not clear the requestor is acting as the vehicle owner's authorized representative. Therefore, we must rule conditionally. To the extent the requestor has a right of access under section 552.023 to her insured's Texas motor vehicle record information, the department must release the insured's motor vehicle record information to the requestor and must withhold the marked Texas motor vehicle record information of individuals other than the insured under section 552.130 of the Government Code. To the extent this requestor does not have a right of access under section 552.023, the department must withhold all of the marked Texas motor vehicle record information under section 552.130 of the Government Code.<sup>2</sup>

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

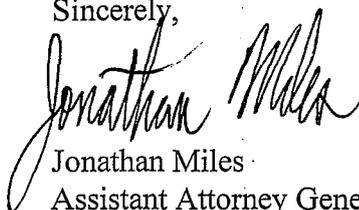
<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, to the extent the requestor is not the authorized representative of the individual whose information is at issue, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor has a right of access to her insured's Texas motor vehicle record information, the department must release the insured's motor vehicle record information to the requestor and must withhold the marked Texas motor vehicle record information of individuals other than the insured under section 552.130 of the Government Code. To the extent this requestor does not have a right of access under section 552.023, the department must withhold all of the marked Texas motor vehicle record information under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/eeg

Ref: ID# 404100

Enc. Submitted documents

c: Requestor  
(w/o enclosures)