



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2011

Mr. Justin D. Gordon
Assistant General Counsel
Office of the Governor
P.O. Box 12548
Austin, Texas 78711-2548

OR2011-02962

Dear Mr. Gordon:

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# 413191 (OOG# 013-11).

The Office of the Governor (the "governor") received a request for information pertaining to a named individual. You state the governor is withholding social security numbers under section 552.147(b) of the Government Code.¹ You claim the marked 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 of 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. *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. 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 id.* at 683. Upon review, we agree most of the information you have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, except for the

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. Gov't Code § 552.147(b).

information we have marked for release, the governor must withhold the marked information under section 552.101 in conjunction with common-law privacy.

We note, however, the requestor may be an authorized representative of the individual at issue. Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a). Accordingly, if the requestor is an authorized representative of the individual at issue, then the requestor has a right of access to the information you have marked pursuant to section 552.023 of the Government Code and the information must be released to him. *See id.* If the requestor does not have a right of access to the information you have marked pursuant to section 552.023, then the governor must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 413191

Enc: Submitted documents

c: Requestor
(w/o enclosures)