



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2011

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2011-03171

Dear Mr. Ohnemiller:

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# 410643.

The Midland Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual. 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. This section encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 393 at 2 (1983), 339 (1982), 440 (1986) (detailed descriptions of

serious sexual offenses must be withheld). The submitted information relates to an alleged sexual assault. In this instance, the request indicates the requestor knows the identity of the alleged victim. Therefore, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy.

In this instance, however, the requestor may be an authorized representative of the victim whose right to privacy is at issue. If the requestor is acting as the victim's authorized representative, then he has a special right of access to information that would ordinarily be withheld to protect the victim's privacy interests. *See* Gov't Code § 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). Thus, if the requestor is not acting as the victim's authorized representative, then, to protect the privacy of the individual to whom the information relates, the department must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the victim's authorized representative, the department may not withhold the submitted information under section 552.101 in conjunction with common-law privacy. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). In such case, we note portions of the submitted information are subject to section 552.130 of the Government Code.¹

Section 552.130 excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver's license numbers we marked under section 552.130 of the Government Code.²

In summary, if the requestor is not acting as the victim's authorized representative, the department must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the victim's authorized representative, the department must withhold the information we marked

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

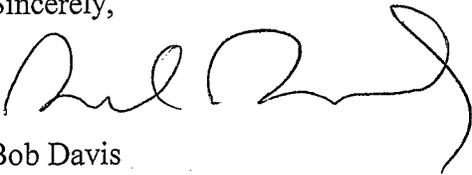
²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

under section 552.130 of the Government Code but must release the remaining submitted information to him.³

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/tf

Ref: ID# 410643

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the remaining information contains social security numbers. 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. *See* Gov't Code § 552.147. However, the requestor has a right of access to social security numbers pertaining to any individual for whom he is an authorized representative. *See generally id.* § 552.023(b). Additionally, because the requestor has a special right of access to any information being released, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.