



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2011

Mr. David M. Douglas
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2011-06746

Dear Mr. Douglas:

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# 420364.

The Austin Police Department (the "department") received a request for all information pertaining to a specified incident. 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. Common-law privacy 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 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. This office has found that 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). Generally, only highly intimate information that implicates the privacy

of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

You argue the submitted report and audio recording must be withheld in its entirety on the basis of common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the submitted information must be withheld on the basis of common-law privacy. Thus, the department may not withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Nevertheless, we find some of the information is highly intimate or embarrassing and not of legitimate concern to the public; therefore, the department must generally withhold the information we have marked in the report, and indicated on the submitted audio recording, under section 552.101 in conjunction with common-law privacy. The remaining information is not highly intimate or embarrassing; therefore, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

We note, however, the requestor is the spouse of the individual whose right to privacy is involved, and, thus, may be acting as the individual's authorized representative. As his spouse's authorized representative, the requestor would have a right of access under section 552.023 of the Government Code to any information the department would be required to withhold from the public to protect his spouse's privacy. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Thus, if the requestor is acting as his spouse's authorized representative, then the information we have marked in the submitted report, and indicated on the submitted audio recording, may not be withheld from this requestor on privacy grounds under section 552.101. *See Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself). If the requestor is not acting as his spouse's authorized representative, then the department must withhold the information we have marked in the submitted report, and indicated on the submitted audio recording, under section 552.101 in conjunction with common-law privacy.

We note section 552.1175 of the Government Code may be applicable to some of the remaining information.¹ Section 552.1175 relates to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See Gov't Code § 552.1175(a)(1)*. This section provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that

¹The 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)*.

reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). A cellular telephone number included on the submitted audio recording relates to an officer of the department and is not held by the department in an employment capacity. Thus, to the extent this information relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b), it must be withheld from the submitted audio recording under section 552.1175 of the Government Code; however, the cellular telephone number may be withheld only to the extent a governmental body does not pay for the cellular telephone service. Conversely, if the peace officer at issue does not elect to restrict access to this information in accordance with section 552.1175(b) or a governmental body pays for the cellular telephone service, the cellular telephone number may not be withheld under section 552.1175.

We also note a portion of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 provides 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). However, as noted above, the requestor is the spouse of the individual whose information is at issue and may be acting as his spouse's authorized representative. Section 552.130 protects privacy interests, and as his spouse's authorized representative, the requestor would have a right of access under section 552.023 to the information marked under section 552.130. *See id.* § 552.023. Thus, if the requestor is acting as his spouse's authorized representative, then he has a right of access to the marked information, and the department must release it to him. If the requestor is not acting as his spouse's authorized representative, he does not have a right of access to this information, and the department must withhold the marked information under section 552.130 of the Government Code.²

In summary, if the requestor is not acting as his spouse's authorized representative, then the department must withhold the information we have indicated on the submitted audio

²We note this office 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 opinion.

recording under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the cellular telephone number included on the submitted audio recording relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, it must be withheld from disclosure under section 552.1175; however, this information may be withheld only if a governmental body does not pay for the cellular telephone service. If the requestor is not acting as his spouse's authorized representative, then the department must withhold the information we have marked under section 552.130 of the Government Code, and release the remaining information. Alternatively, if the requestor is acting as his spouse's authorized representative, the department must release all of the submitted information to this requestor, except to the extent the cellular telephone number included on the submitted audio recording relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b) and the governmental body does not pay for the cellular telephone service. We note that, under either scenario, in the event the department lacks the capability to redact the information we have noted on the submitted audio recording, then it must be withheld in its entirety.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/eb

Ref: ID# 420364

Enc. Submitted documents

cc: Requestor
(w/o enclosures)