



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2011

Ms. Teresa J. Brown  
Senior Open Records Assistant  
City of Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2011-07621

Dear Ms. Brown:

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# 418995 (HAML030911 and FULD040711).

The City of Plano (the "city") received a request for information related to a specified incident and a second request from a different requestor for all reports related to a specified address from January 1, 2009 to the date of the second request. You state you have released some of the responsive information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from an attorney for the second requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate

and 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. The submitted information relates to a sexual assault. In Open Records Decision No. 393, this office concluded generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Further, in those instances where it is demonstrated the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy.

We note the submitted report reflects that the first requester knows the identity of the alleged sexual assault victim listed in the submitted report. Therefore, withholding only the individual's identity from the first requester would not preserve the individual's common-law right to privacy. Accordingly, to protect the individual's privacy, the city must withhold the submitted report in its entirety from the first requester under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the second request does not reflect the second requester knows the identity of the alleged sexual assault victim listed in the report. Thus, the submitted report need not be withheld in its entirety from the second requester on the basis of common-law privacy. However, we find portions of the submitted report are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city must withhold from the second requester the information you have marked, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a). Accordingly, the city must withhold from the second requester the Texas driver's license number you have marked under section 552.130 of the Government Code.<sup>1</sup>

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<sup>1</sup>We 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 Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

In summary, the city must withhold the submitted report in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold from the second requestor the information you have marked, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the Texas driver's license number you have marked under section 552.130 of the Government Code. The remaining information must be released to the second 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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

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VB/dls

Ref: ID# 418995

Enc. Submitted documents

c: Requestors  
(w/o enclosures)