



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 17, 2011

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

OR2011-08619

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# 425830.

The Baytown Police Department (the "department") received a request for a specified incident report. You claim that portions of the submitted information are 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types 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. In addition, 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). Upon review, we agree the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release.¹ Gov't Code § 552.130(a)(2). We have marked the motor vehicle record information that is subject to section 552.130. We note, however, the requestor in this instance appears to be the insurance provider for one of the individuals listed in the submitted information. As such, this requestor, if acting as the individual's authorized representative, has a right of access to his insured's marked Texas motor vehicle record information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear that this requestor is acting as the individual's authorized representative. Therefore, we must rule conditionally. To the extent the requestor has a right of access under section 552.023 to his insured's Texas motor vehicle record information, the department must release this information to the requestor. To the extent the 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.²

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold all of the information we have marked under section 552.130 of the Government Code, unless the requestor has a right of access under section 552.023 of the Government Code to his insured's Texas motor vehicle record information. The remaining information must be released.³

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released contains a social security number. 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 under the Act. Gov't Code § 552.147(b)

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bs

Ref: ID# 425830

Enc. Submitted documents

c: Requestor
(w/o enclosures)