



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2011

Ms. Delietrice Henry  
Open Records Assistant  
Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2011-11133

Dear Ms. Henry:

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# 425715 (ORR #NEWB05111).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident. You state portions of the submitted information may be 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 common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See 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. Upon review, we agree the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the department must generally withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, you have

failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. As such, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that the requestor may be the authorized representative of the individual whose privacy interests are at issue in the submitted information. Accordingly, the requestor may have a special right of access to information that would ordinarily be withheld to protect this individual's common-law privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is the authorized representative of this individual and has a special right of access to the information we have marked, then this information may not be withheld from him under section 552.101 in conjunction with common-law privacy. However, if the requestor does not have a special right of access, then the department must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. You assert portions of the remaining information are protected under constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not demonstrated how constitutional privacy applies to any of the remaining information in the submitted report. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release.<sup>1</sup> Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We note, however, section 552.130 protects privacy interests. As

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<sup>1</sup>The 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).

previously noted, the requestor may be an authorized representative of the individual whose privacy is at issue in the submitted information. Thus, the requestor may have a right of access under section 552.023 of the Government Code to this individual's motor vehicle record information. Gov't Code § 552.023(b). If the requestor is an authorized representative of this individual, then he has a right of access under section 552.023 to this individual's motor vehicle record information and it may not be withheld from him under section 552.130. If the requestor is not an authorized representative of the named individual, then this information must be withheld under section 552.130.<sup>2</sup>

In summary, if the requestor is the authorized representative of the individual whose privacy is at issue in the submitted information, then this individual's information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code may not be withheld from the requestor on those bases.<sup>3</sup> However, if the requestor does not have a special right of access, then the department must withhold this individual's information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The department must release the remaining information.<sup>4</sup>

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.

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<sup>2</sup>In this instance, 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 a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>In this instance, we note the requestor has a special right of access under section 552.023 of the Government Code to some of the information being released. Accordingly, if the department should receive another request for this information from someone without such a right of access, the department should again request an opinion from this office.

<sup>4</sup>We note the remaining information 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 without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b). As previously noted, because the requestor may be the authorized representative of the individual whose social security number is at issue, the requestor may have a right of access under section 552.023 to this individual's social security number. *See generally id.* § 552.023(b). If the requestor is an authorized representative of this individual, then he has a right of access under section 552.023 of the Government Code to this individual's social security number, and it may not be withheld from him under section 552.147. If the requestor is not an authorized representative of this individual, we note the department may withhold it under section 552.147(b). In the future, if the department receives another request for these same records from a person other than one with a right of access under section 552.023, the department is authorized to withhold this individual's social security number under section 552.147(b) without the necessity of requesting an attorney general decision.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/tf

Ref: ID# 425715

Enc. Submitted documents

c: Requestor  
(w/o enclosures)