



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2011

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

OR2011-18189

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# 438601.

The Baytown Police Department (the "department") received two requests from the same requestor for an incident report involving a named individual and a specified incident, and an incident report involving the same named individual and a specified date. You claim the submitted incident reports 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 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 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 types 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. 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 claim the submitted reports are protected in their entirety by common-law privacy. In this instance, the request for information reflects the requestor knows the identity of the individual involved, as well as the nature of the incident at issue in report number 2007-9081. Therefore, withholding only the individual's identity or certain details of that incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, the department must withhold incident report number 2007-9081 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In this instance, you have not demonstrated, nor does the report reflect, report number 2011-22233 involves a situation in which the entire report must be withheld from the requestor on the basis of common-law privacy. However, we find portions of the report are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold the information we have marked in report number 2011-22233 under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The remaining information in report number 2011-22233 contains information that constitutes CHRI that is confidential under chapter 411. Accordingly, the department must withhold that information, which we have marked, under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

The remaining information in report number 2011-22233 contains motor vehicle record information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license, title, or registration issued by a Texas

agency, or an agency of another state or country, is excepted from public release.¹ Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov't Code § 552.130(a)(1), (2)). Therefore, the department must withhold the motor vehicle record information we have marked in report number 2011-22233 under section 552.130 of the Government Code.²

In summary, the department must withhold (1) incident report number 2007-9081 in its entirety and the information we have marked in report number 2011-22233 under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked in report number 2011-22233 under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; and (3) the motor vehicle record information we have marked in report number 2011-22233 under section 552.130 of the Government Code. The department must release the remaining information.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

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).

²This 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 license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 438601

Enc. Submitted documents

c: Requestor
(w/o enclosures)