



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 13, 2011

Mr. Robert Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606

OR2011-18344

Dear Mr. Ray:

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# 438741.

The Longview Police Department (the "department") received a request for information concerning an incident that occurred at a specified location on a specified date. You claim the submitted information is excepted from disclosure pursuant to sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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 common-law right to privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). 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. In this instance, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entire report must be withheld on the basis of common-law privacy. Therefore, the submitted information may not be withheld in its entirety under section 552.101 in conjunction with common-law privacy. However, we find the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. Thus, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of the remaining information may be subject to section 552.1175 of the Government Code.<sup>1</sup> Section 552.1175 provides in relevant part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

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

Gov't Code § 552.1175(a)(1); Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). Section 552.1175 also encompasses a peace officer's personal cellular telephone number if the officer pays for the cellular telephone service with his or her own personal funds. The submitted documents contain information pertaining to a former peace officer. Upon review, we find the department must withhold the information we have marked under section 552.1175 if the

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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).

individual to whom this information concerns is currently a licensed peace officer and she elects to restrict access to her information in accordance with section 552.1175(b). However, the department may not withhold the cellular telephone number we have marked under section 552.1175 if the officer concerned did not pay for the cellular telephone service with her own personal funds. If this individual is no longer a peace officer, or no election is made, the department may not withhold the individual's information under section 552.1175.

Section 552.130 of the Government Code provides that information related 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. *See* 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(a)(1)-(2)). Accordingly, the department must withhold the driver's license and license plate numbers you have marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). Accordingly, regardless of the applicability of section 552.1175, the department may withhold the former officer's social security number, as well as the additional social security numbers you have marked, under section 552.147 of the Government Code.<sup>2</sup>

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked under section 552.1175 of the Government Code if the individual to whom this information concerns is a currently licensed peace officer and she elects to restrict access to her information, in accordance with section 552.1175(b) of the Government Code. However, the department may not withhold the cellular telephone number we have marked under section 552.1175 if the officer concerned did not pay for the cellular telephone service with her own personal funds. If this individual is not a currently licensed peace officer, or no election is made, the department may not withhold the individual's information under section 552.1175 of the Government Code. The department must withhold the information you have marked under section 552.130 of the Government Code. The department may withhold the information you have marked under section 552.147 of the Government Code. The remaining information must be released.

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>We note 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.

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,

A handwritten signature in black ink, appearing to read 'D. Shores', with a long horizontal flourish extending to the right.

Damien Shores  
Assistant Attorney General  
Open Records Division

DS/sdk

Ref: ID# 438741

Enc. Submitted documents

c: Requestor  
(w/o enclosures)