



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2011

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

OR2011-19046

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# 440759.

The Baytown Police Department (the "department") received two requests for a specified incident report. You state you will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found some kinds of

¹Section 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. See Gov't Code § 552.147(b).

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). We agree the information you have marked is highly intimate or embarrassing and not of legitimate public concern. In this instance, some of the marked information relates to the first requestor, who, as you acknowledge, has a right of access under section 552.023 of the Government Code to this information. Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles). Therefore, the department may not withhold the marked information pertaining to the first requestor from him under section 552.101 in conjunction with common-law privacy. However, the department must withhold the remaining marked information from the first requestor and all of the marked information from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal case. Based upon this representation and our review, we conclude the release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d. 559 (Tex. 1976). Thus, we agree the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130. You have marked the motor vehicle record information that is subject to section 552.130 of the Government Code. We note, however, the second requestor in this instance is 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 second requestor has a right of access under section 552.023 to his insured's Texas motor vehicle record information, the department must release this

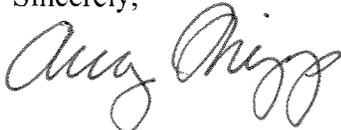
information to the requestor. To the extent the second requestor does not have a right of access under section 552.023, the department must withhold all of the marked Texas motor vehicle record information under section 552.130 of the Government Code from this requestor. In either instance, the department must withhold all of the information marked under section 552.130 of the Government Code from the first requestor.²

In summary, except for the information pertaining to the first requestor which must be released to him, the department must withhold the information you marked from both requestors under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you marked under section 552.108(a)(1) of the Government Code. To the extent the second requestor does not have a right of access under section 552.023 of the Government Code to his insured's Texas motor vehicle record information, the department must withhold all of the marked Texas motor vehicle record information under section 552.130 of the Government Code from this requestor. The department must withhold all of the information marked under section 552.130 of the Government Code from the first requestor. 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.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

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²As you acknowledge, this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold several 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.

Ref: ID# 440759

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)