



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2012

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2012-02010

Dear Mr. Mann:

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# 443327 (GCA11-0884).

The Garland Police Department (the "department") received a request for five categories of information pertaining to a specified arrest. You state you have released some information to the requestor. You state you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that some of the submitted information is excepted from disclosure under sections 552.101 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 143.090 of the Local Government Code. You state the City of Garland is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides as follows:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

¹Section 552.147(b) 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).

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You seek to withhold a video recording depicting department officers. However, the legislative history for section 143.090 indicates the Legislature did not intend to extend the statute's protection to video recordings. Hearings on H.B. 2006 Before the House Comm. on Urban Affairs, 82nd Leg., R.S. (March 30, 2011) (bill's author, Rep. Bonnen, explained statute's protection limited to photographs and does not protect video). Accordingly, we conclude that no portion of the video recording may be withheld under section 552.101 in conjunction with section 143.090 of the Local Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law 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 established. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You assert the information you have marked in pink is protected by common-law privacy. Upon review, we agree a portion of this information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and not of legitimate public interest, and the department may not withhold it under section 552.101 on that basis.

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. Gov't Code § 552.130. Upon review, we agree the department must withhold the information you have marked in yellow under section 552.130 of the Government Code.

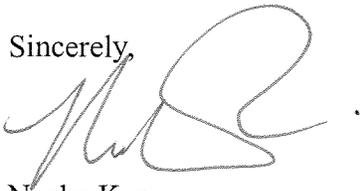
In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The

department must withhold the information you have marked in yellow under section 552.130 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.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 443327

Enc. Submitted documents

cc: Requestor
(w/o enclosures)