



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2012

Ms. Judi S. Rawls
Police Administrative Legal Counsel
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2012-02162

Dear Ms. Rawls:

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# 443621.

The Beaumont Police Department (the "department") received a request for information concerning a specified incident. You state some information has been released to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions 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. 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:

- (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 state the City of Beaumont is a civil service city under chapter 143 of the Local Government Code. You seek to withhold the submitted video recording because it depicts 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 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 also 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). We note names, addresses, and telephone numbers of individuals are not highly intimate or embarrassing. *See Open Records Decision No. 455 at 7 (1987)* (names and addresses not protected by privacy). You assert portions of the submitted information are protected by common-law privacy. However, we note the requestor is an attorney representing the individual whose information is at issue. As the individual's representative, the requestor has a right of access to information concerning the individual that would otherwise be withheld to protect the individual's privacy. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individuals request information concerning themselves). Therefore, the department may not withhold any portion of the submitted information concerning the requestor's client from this requestor under section 552.101 on the basis of common-law privacy. Further, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest, and it may not be withheld on the basis of common-law privacy.

We note you have marked information under section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). However, section 552.130 protects personal privacy. As noted, the requestor is a representative of the individual whose information is at issue and has a right of access to information concerning the individual. *See id.* § 552.023; ORD 481. Therefore, the department may not withhold any of the submitted information from this requestor under section 552.130.

As you raise no additional exceptions to disclosure, the submitted information must be released to the requestor.¹

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 443621

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As noted, the requestor in this instance has a special right of access under section 552.023 to some of the information being released. Accordingly, if the department should receive another request for this information from a different requestor, the department must again request an opinion from this office.