



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2012

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

OR2012-02782

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# 450120.

The Baytown Police Department (the "department") received two requests for report number 2012-1216. You claim some of the submitted information is exempted from disclosure under sections 552.130 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(1)-(2). 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 represents 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 the 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 the insured's Texas motor vehicle record information, the department must release this information to the second 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.

Section 552.136 of the Government Code provides in part that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device for purposes of section 552.136. You have marked insurance policy numbers that are subject to section 552.136 of the Government Code. As noted above, however, the second requestor represents the insurance provider for one of the individuals listed in the submitted information and may have a right of access to the insured's marked insurance policy number. *See id.* § 552.023(a); ORD 481 at 4. To the extent the second requestor has a right of access under section 552.023 to the insured's insurance policy number, the department must release this information to the second 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 insurance policy numbers 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 552.136 of the Government Code from the first requestor.

Finally, we note some of the submitted information may be excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy 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 and 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. Prior decisions of this office have found financial information relating

¹The Office of the Attorney General will raise a mandatory exception such as section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600, 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* ORD 600 (personal financial information includes choice of particular insurance carrier).

Upon review, we find some of the submitted information is highly intimate or embarrassing and of no legitimate interest. However, the marked information relates to the second requestor's insured, who, as noted above, may have 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, to the extent the second requestor has a right of access under section 552.023 to the insured's private information, the department must release this information to the second requestor. To the extent the second requestor does not have a right of access under section 552.023, the department must withhold the private information from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy. In either instance, the department must withhold all of the private information under section 552.101 of the Government Code from the first requestor.

In summary, to the extent the second requestor has a right of access under section 552.023 to the insured's information, the department must release this information to the second requestor but must withhold it from the first requestor under (1) section 552.130 of the Government Code; (2) section 552.136 of the Government Code; and (3) section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the second requestor does not have a right of access under section 552.023 of the Government Code to the insured's information, the department must withhold the marked information from both requestors under (1) section 552.130 of the Government Code; (2) section 552.136 of the Government Code; and (3) section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 450120

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)