



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 13, 2012

Ms. Teresa J. Brown  
Sr. Open Records Assistant  
City of Plano  
P. O. Box 860358  
Plano, Texas 75086-0358

OR2012-03741

Dear Ms. Brown:

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# 448547 (Plano Tracking No. #COOK122911).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses the doctrines of common-law privacy and constitutional privacy. Common-law privacy 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. The type of information considered highly intimate or 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. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required disclosure under common-law privacy. *See* Open Records Decision No. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Constitutional privacy consists of two inter-related types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599–600 (1977); Open Records Decision Nos. 600 at 3–5 (1992), 478 at 4 (1987), 455 at 3–7. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected by constitutional privacy is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. However, the requestor in this instance may be the authorized representative of the individual whose information is at issue. Section 552.023 of the Government Code gives a person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interests. *See Gov't Code § 552.023*; Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to person to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is acting as the authorized representative of the individual whose information is at issue, then section 552.023 provides the requestor a special right of access to the marked information, and the department may not withhold it under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the individual at issue, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy. However, the remaining information is not highly intimate or embarrassing or is of legitimate public concern; thus, the department may not withhold the remaining information under section 552.101 on the basis of common-law privacy. Further, upon review, we find no portion of the remaining information falls within the zones of privacy or implicates an individual's privacy for purposes of constitutional privacy. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with constitutional privacy.

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.<sup>1</sup> *Gov't Code § 552.130(a)(1)-(2)*. However, we note this exception protects personal privacy. Thus, if the requestor is the authorized representative of the individuals' whose motor vehicle information is at issue, then the

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental bod, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

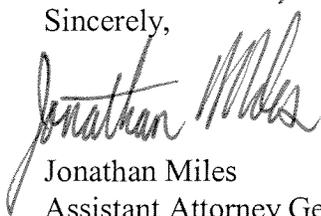
requestor has a right of access under section 552.023 of the Government Code to the individuals' driver's license information, and the department may not withhold that information under section 552.130 of the Government Code. *See id.* § 552.023; ORD 481 at 4. If the requestor is not the named individuals' authorized representative, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of the individual at issue, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy. To the extent the requestor is not the named individuals' authorized representative, the department must withhold the information we have marked 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 448547

Enc. Submitted documents

c: Requestor  
(w/o enclosures)