



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 22, 2012

Mr. Jeffrey L. Moore  
For City of The Colony  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2012-04239

Dear Mr. Moore:

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# 448317.

The City of The Colony Police Department (the “department”), which you represent, received a request for three specified police reports and all call sheets regarding the requestor’s address since 2006. You indicate some information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> 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. Section 552.101 encompasses the common-law right of 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

---

<sup>1</sup>Although you do not specifically raise section 552.130, you have marked information for which you appear to claim this exception. Accordingly, we will address section 552.130, as this section is a mandatory exception to disclosure. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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 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.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, offense report 2009-00006585 reveals the requestor knows the identity of the individual involved as well as the nature of the information at issue in that report. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must generally withhold offense report 2009-00006585 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

This office has also found some kinds of 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). Upon review, we find the information we have marked in offense reports 2011-00018492 and 2011-00018554 constitutes information that is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the department must generally withhold the information we have marked in offense reports 2011-00018492 and 2011-00018554 under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor is the spouse of the individual to whom the information subject to common-law privacy pertains and therefore, may have a right of access to this information. *See* Gov't Code § 552.023(a) ("person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Thus, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to offense report 2009-00006585 and the marked information in offense reports 2011-00018492 and 2011-00018554 pursuant to section 552.023, and this information may not be withheld from her under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of her spouse, then the department must withhold offense report 2009-00006585 in its entirety and the information

we have marked in offense reports 2011-00018492 and 2011-00018554 under section 552.101 in conjunction with common-law privacy.

You have marked some of the remaining information under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the department must generally withhold the motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

However, we note section 552.130 of the Government Code also protects personal privacy. In this instance, most of the information at issue belongs to the requestor's spouse, and she may be requesting the report on his behalf as his authorized representative. Additionally, the marked license plate number may belong to the requestor. As noted above, she may have a right of access under section 552.023 of the Government Code to the marked information that would otherwise be withheld to protect her husband's privacy. *See id.* § 552.023(a). Thus, to the extent the requestor is acting as her husband's authorized representative, she has a right of access to his driver's license number, and it may not be withheld from her under section 552.130. Additionally, to the extent the requestor is the owner of the vehicle at issue, she has a right of access to the motor vehicle information concerning that vehicle under section 552.130.

In summary, if the requestor is not acting as her husband's authorized representative, the department must withhold offense report 2009-00006585 in its entirety and the information we have marked in offense reports 2011-00018492 and 2011-00018554 under section 552.101 of the Government Code in conjunction with common-law privacy. In that case, the department also must withhold the marked driver's license number under section 552.130 of the Government Code. Additionally, to the extent the requestor is not the owner of the vehicle at issue, the department also must withhold the marked license plate number under section 552.130 of the Government Code and release the remaining information to the requestor. If the requestor is acting as her husband's authorized representative, the department must release the requested information in its entirety.

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,

A handwritten signature in cursive script, appearing to read "Kathryn R. Mattingly".

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 448317

Enc. Submitted documents

c: Requestor  
(w/o enclosures)