



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2012

Ms. Samantha Dyal
For City of Schertz
Fulbright & Jaworski, L.L.P.
300 Convent Street, Suite 2100
San Antonio, Texas 78205

OR2012-10593

Dear Ms. Dyal:

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# 458810.

The Schertz Police Department (the "department"), which you represent, received a request for the police reports generated from two separate 9-1-1 calls in January 2012. You state you have released some of the requested information to the requestor. You claim that the submitted information is 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 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 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 or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation where the submitted information must be withheld in its entirety on the basis of common-law privacy. Upon review, however, we find portions of the submitted information to be highly intimate or embarrassing and of no legitimate public interest. Accordingly, the information we have marked is confidential under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the requestor may be the authorized representative of the individual to whom the marked information pertains. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Thus, if the requestor is acting as the authorized representative of the individual, he has a right of access to the information pursuant to section 552.023(b), and it may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the individual involved, then the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country.¹ Gov't Code § 552.130(a)(2). We have marked a license plate number in the remaining information that is subject to section 552.130(a)(2) of the Government Code. However, we note section 552.130 is based on privacy principles and the requestor may have a right of access to the information at issue. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). In this instance, it is not clear whether the requestor has a right of access to the information at issue and we must rule conditionally. In the event the requestor has a right of access to the information we have marked under section 552.130, the department may not withhold this information from the requestor. Conversely, if the requestor does not have a right of access, the department must withhold the marked license plate number under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of the individual involved, then the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Additionally, if the requestor does not have a right of access, the department must withhold the license plate number we have marked under section 552.130 of the Government Code. The remaining information must be released.

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

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/dls

Ref: ID# 458810

Enc. Submitted documents

c: Requestor
(w/o enclosures)