



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2012

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

OR2012-11624

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# 460191.

The Baytown Police Department (the "department") received a request for all incident or media reports pertaining to six specified report numbers. You inform us that the department has released most of the requested information. You state the department will redact social security numbers and partial social security numbers pursuant to section 552.147 of the Government Code.¹ You claim some of the submitted information is exempted from disclosure under sections 552.101, 552.1175, and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The types of information considered intimate and embarrassing

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. See Gov't Code § 552.147(b).

²Although you raise section 552.151 of the Government Code for portions of the submitted information, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. See Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

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. This office has 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information you have marked under common-law privacy is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). You raise section 552.1175 for portions of the submitted information. You inform us the information at issue pertains to a peace officer who elected to restrict access to his personal information. Therefore, the department must withhold the personal information you have marked, and the additional personal information we have marked, under section 552.1175 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You inform us the information you have marked under section 552.152 relates to undercover police officers. You state release of this information would subject these officers to a substantial threat of physical harm. Based on your representations and our review, we find you have demonstrated release of the information at issue would subject the officers to a substantial threat of physical harm. Therefore, the department must withhold the information you have marked under section 552.152 of the Government Code.

In summary, the department must withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy, and sections 552.1175 and 552.152 of the Government Code. The department must release the remaining information.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 460191

Enc. Submitted documents

c: Requestor
(w/o enclosures)