



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2012

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2012-12591

Dear Mr. Ohnemiller:

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# 461502.

The Midland Police Department (the "department") received a request for information pertaining to a specified incident. 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. This section encompasses the doctrine of common-law privacy, which 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 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 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. Although you assert the submitted information is subject to common-law privacy in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation where the entirety of the information must be withheld on the basis of common-law privacy. Accordingly, the submitted information may not be withheld in its entirety under common-law privacy. However, we find portions of the submitted information, which we have marked, are highly intimate or embarrassing and not of legitimate public interest. Therefore, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information related to a motor vehicle operator's or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release.¹ *See* Gov't Code § 552.130(a)(1). The department must withhold the driver's license number we have marked under section 552.130.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The remaining information must be released.²

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

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).

²We note the information being released contains the requestor's driver's license number, which is generally confidential under section 552.130(a)(1) of the Government Code. However, because section 552.130 protects personal privacy, the requestor has a right of access to his own information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c). Thus, if the department receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the department to redact the driver's license number at issue. We also note the information being released contains social security numbers. Section 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. However, we note the requestor has a right of access to his own social security number. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests).

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 black ink, appearing to read "Sarah Casterline", with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 461502

Enc. Submitted documents

c: Requestor
(w/o enclosures)