



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2012

Mr. R. Brooks Moore
Managing Counsel
Texas A&M University System
A&M System Building, Suite 2079
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2012-16664

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# 468214 (TAMU 12-366).

Texas A&M University (the "university") received a request for a specified incident report. You claim some of the requested 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. Common-law privacy 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. This office has found that 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 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the university must generally withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the requestor is the spouse of the individual to whom the marked information pertains and may have a right of access to this information. *See* Gov't Code § 552.023(b) ("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"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Thus, if the requestor is acting as the authorized representative of his spouse, then he has a right of access to the marked information pursuant to section 552.023(b), and this information 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 his spouse, then the university must withhold the marked information under section 552.101 in conjunction with common-law privacy. The university has failed to demonstrate how the remaining information it has marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the university may not withhold any portion of the remaining information it has marked under section 552.101 in conjunction with common-law privacy.

We note the university has redacted a driver's license number pursuant to section 552.130(c) of the Government Code.¹ Section 552.130(a)(1) of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a)(1). We find the university must generally withhold the driver's license number you have redacted under section 552.130 of the Government Code. However, we note this information belongs to the requestor's spouse. Section 552.130 protects personal privacy. Therefore, as noted above, the requestor may have a right of access to his spouse's driver's license number as her authorized representative. *See id.* § 552.023(a); ORD 481 at 4. Thus, if the requestor has a right of access to the driver's license number you have redacted, the university may not withhold this information from this requestor.

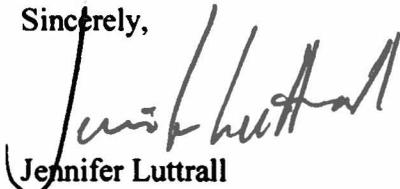
¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

In summary, if the requestor is not acting as the authorized representative of his spouse, then the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the authorized representative of his spouse, then he has a right of access to the information we marked under section 552.101 in conjunction with common-law privacy and the redacted driver's license number pursuant to section 552.023 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 468214

Enc. Submitted documents

c: Requestor
(w/o enclosures)