



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2012

Ms. Lizbeth Islas Plaster
City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2012-17379

Dear Ms. Plaster:

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# 469390 (PIA 12-566, 12-567, and 12-568).

The City of Lewisville and the Lewisville Police Department (collectively, the "city") received three requests from different requestors for information pertaining to a specified incident. You claim 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *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. 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).

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 at issue and the nature of the incident, the information must be withheld in its entirety 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, that this is a situation where the information must be withheld in its entirety on the basis of common-law privacy. However, we agree that portions of the submitted information are highly embarrassing and not of legitimate public interest. Accordingly, the city must withhold the information we have marked and indicated in the submitted audio recording under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the city must withhold the motor vehicle record information we have marked and indicated in the submitted audio recording under section 552.130 of the Government Code.

You claim the city lacks the technical capability to redact the information at issue from the submitted audio recording. However, because the city had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the city has the capacity to produce a copy of only the non-confidential portions of the submitted audio recording. Therefore, we find the city must withhold the information in the audio recording we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The city must release the remaining information, including the remaining information in the audio recording.²

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

²We note the remaining information contains a social security number. 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. *See* Gov't Code § 552.147(b).

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# 469390

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

