



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2012

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2012-18098

Dear Ms. Jimenez:

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# 474996.

The Nueces County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case. You state some information has been released. You claim some of the submitted information is excepted from disclosure under section 552.101, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions 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 common-law right to 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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or

specific illnesses are generally highly intimate or embarrassing. *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 you have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, the sheriff's office must generally withhold the marked information under section 552.101 in conjunction with common-law privacy.

However, we note the requestor may be an attorney representing the individual whose private information is at issue. As the individual's authorized representative, the requestor would have a right of access to information concerning his client that would otherwise be withheld to protect his client's privacy. *See* Gov't Code § 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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the requestor is the individual's authorized representative, the sheriff's office may not withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not the individual's authorized representative, the sheriff's office must withhold the information you have marked on that basis.

You indicate the sheriff's office will withhold a driver's license number as permitted by section 552.130(c) of the Government Code and a social security number as permitted by section 552.147(b) of the Government Code.¹ However, sections 552.130 and 552.147 both protect personal privacy. As noted, the requestor may be the authorized representative of the individual whose information is at issue and, in that event, would have a right of access to his client's driver's license number and social security number. *See* Gov't Code § 552.023; ORD 481. If the requestor is the individual's authorized representative, the sheriff's office may not withhold the information you have marked under sections 552.130 and 552.147. If the requestor is not the individual's authorized representative, the sheriff's office must withhold the information you marked under section 552.130 and may withhold the information you marked under section 552.147.

In summary, if the requestor is not the authorized representative of the individual whose information is at issue, the sheriff's office must withhold the information you have marked under section 552.101 in conjunction with common-law privacy and under section 552.130

¹Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See id.* § 552.147(b).

and may withhold the information you have marked under section 552.147. If the requestor is the individual's authorized representative, the sheriff's office may not withhold the marked information. In either case, 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eb

Ref: ID# 474996

Enc. Submitted documents

c: Requestor
(w/o enclosures)