



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 8, 2013

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

OR2013-00435

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# 475933.

The Baytown Police Department (the "department") received a request for a specified police report. You state the department will redact partial social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.152 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the department has marked information that is not part of the requested police report. This information is not responsive to the instant request for information. This ruling does not address the public availability of nonresponsive information, and the department is not required to release nonresponsive information in response to this request.

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<sup>1</sup>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. *See* Gov't Code § 552.147(b).

<sup>2</sup>Although 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. Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

Section 552.101 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. Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. The department must generally withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, in this instance, the submitted report contains information about a vehicle that may be owned by the requestor. Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person’s authorized representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. *Id.* § 552.023(a). Thus we must rule conditionally. If the requestor is the owner of the vehicle at issue, then the requestor has a right of access to this information pursuant to section 552.023. However, if the requestor is not the owner of the vehicle at issue, the department must withhold the motor vehicle record information we have marked under section 552.130 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 state the release of the undercover police officers' names and identifying information would "subject the officers to a substantial threat of physical harm." Based on your representation, we find the department has demonstrated release of this information would subject the officers to a substantial threat of physical harm. We therefore conclude the department must withhold the officers' names and identifying information, which you have marked, under section 552.152 of the Government Code.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 of the Government Code; however, if the requestor is the owner of the vehicle at issue, the department must release this information to the requestor pursuant to section 552.023 of the Government Code. The department must withhold the information you have marked under section 552.152 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](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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 475933

Enc. Submitted documents

c: Requestor  
(w/o enclosures)