



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2013

Mr. Steven Meyer
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2013-05170

Dear Mr. Meyer:

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# 482696 (Arlington PD Ref. No. 10019-010913).

The Arlington Police Department (the "department") received a request for documents regarding a harassment incident involving the requestor from May 2012 until the date of the request, and any family violence information regarding a named individual. You state you have released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. Section 552.101 encompasses the doctrine of common-law 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. The types 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

¹Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this section based on your argument.

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 confidential in its entirety pursuant to common-law privacy, we find this is not a situation where all of this information must be withheld to protect any individual's privacy interest. Upon review, however, we find portions of the submitted information are highly intimate or embarrassing and of no legitimate public interest. Accordingly, this information is subject to common-law privacy. However, we note the requestor is the authorized representative of the individuals whose privacy information is at issue, and thus has a special right of access under section 552.023 of the Government Code to this information that would otherwise be excepted from public disclosure under laws intended to protect the individuals' privacy interests. *See* Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Therefore, upon review, we find the department may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy.

We note some of the submitted information is subject to section 552.130 of the Government Code.² Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Upon review, we find the department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.³

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³As previously noted, this requestor has a special right of access under section 552.023 of the Government Code to some of the information being released. *See* Gov't Code § 552.023(a). Therefore, if the department receives another request for this information from a person who does not have a special right of access to this information, the department should submit this same information and request another decision from this office. *See id.* §§ 552.301(a), .302. We also note the information being released contains an e-mail address, to which the requestor has a right of access pursuant to section 552.137(b) of the Government Code. *See* Gov't Code § 552.137(b). Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision. Accordingly, if the department receives another request from an individual other than this requestor, the department is authorized to withhold the e-mail address under section 552.137 without the necessity of requesting an attorney general decision. Further, we note the information being released contains a social security number, which the department would normally withhold under section 552.147 of the Government Code. *See id.* § 552.147(a). However, the requestor has a special right of access to this social security number. *See id.* § 552.023(a). If the department receives another request for these same records from a person other than one with a right of access under section 552.023, then the department is authorized to redact the social security number under section 552.147(b) without the necessity of requesting an attorney general decision. *See id.* § 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 482696

Enc. Submitted documents

c: Requestor
(w/o enclosures)