



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2013

Ms. Evelyn Njuguna
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2013-08736

Dear Ms. Njuguna:

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# 488261 (OR No. 13-1156)

The Houston Police Department (the "department") received a request for a specific incident report.¹ You claim the submitted 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. Section 552.101 encompasses the doctrine of common-law privacy, which 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 established. *Id.* at 681-82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information

¹We note the department sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

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 also has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 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 involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy. Although you assert the information at issue 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. However, upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, this information must be withheld under section 552.101 in conjunction with common-law privacy. However, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

The remaining information contains a driver's license number. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release.² Gov't Code § 552.130(a)(1). Upon review, we find the department must withhold the driver's license number we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The department must release the remaining information.³

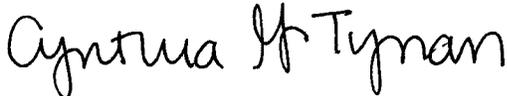
²The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note the remaining information includes the requestor's driver's license number, which is excepted from public disclosure under section 552.130(a)(1) of the Government Code. Because this section protects privacy, the requestor has a right of access to her own driver's license number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). The department is authorized to redact driver's license number under section 552.130(c) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c)-(e). Thus, should the department receive another request for the submitted information from a different requestor, the department is authorized to withhold the requestor's driver's license number without requesting another ruling.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 488261

Enc. Submitted documents

c: Requestor
(w/o enclosures)