



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 9, 2013

Ms. Teresa J. Brown  
Senior Open Records Assistant  
Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2013-13835

Dear Ms. Brown:

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# 496618 (Plano PD File# VOGT052913).

The Plano Police Department (the "department") received a request for all records filed against a named individual resulting from calls made by the requestor at a specified residence. You inform us you have released some of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions 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. *Indus. Found. v. Tex. Indus. Accident Bd.*,

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<sup>1</sup>Although you do not specifically raise section 552.130, you have marked information for which you appear to claim this exception. Accordingly, we will address section 552.130, as this section is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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 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 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). Upon review, we find the information you have marked, in addition to the information we have marked, is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the department must generally withhold the information you have marked, and the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

You have marked some of the remaining information under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. Upon review, we find the department must generally withhold the motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.<sup>2</sup>

However, we note common-law privacy and section 552.130 of the Government Code protect personal privacy. In this instance, we understand the information at issue belongs to the requestor’s spouse, and she may be requesting this information on his behalf as his authorized representative. Therefore, she may have a right of access under section 552.023 of the Government Code to the marked information, which would otherwise be withheld to protect her husband’s privacy. *See id.* § 552.023(a) (“person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”). Thus, if the requestor is acting as her husband’s authorized representative, she has a right of access to the marked information pertaining to him, and it may not be withheld from her under section 552.101 in conjunction with common-law privacy or section 552.130. In that case, all the submitted information must be released to the requestor. However, if the requestor

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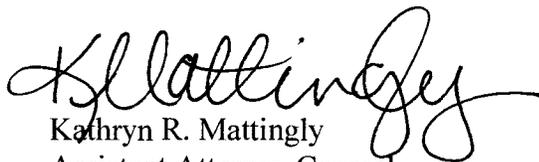
<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov’t Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov’t Code § 552.130(d), (e).

is not acting as her husband's authorized representative, the department must withhold the information you have marked, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy, and the information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code. In that case, the department must release the remaining information to the requestor.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 496618

Enc. Submitted documents

c: Requestor  
(w/o enclosures)