ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2013

Ms. Rachel Saucier
Legal Assistant
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2013-16563

Dear Ms. Saucier:

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# 504173 (Georgetown Request #PD ORR 2013-419).

The Georgetown Police Department (the "department") received a request for thirteen categories of information pertaining to a specified incident. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. 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 common-law right of 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

You have marked the information you seek to withhold under common-law privacy. In this instance, we note the requestor represents the individual whose privacy rights are implicated. Thus, the requestor has a special right of access to her client's information that would ordinarily be withheld to protect the individual's privacy interests. *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 protection person's privacy interests). Accordingly, the department may not withhold the requestor's client's information you have marked under section 552.101 in conjunction with common-law privacy. However, we note a portion of the submitted video recording pertains to an individual who is not the requestor's client and satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. As such, the department must withhold this information, which we have indicated, under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). You assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert*'s interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court then considered the applicability of section 552.102, and has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Id.* at 347. Thus, *Texas Comptroller* applies to only a public employee's birth date maintained by the employer in an employment context. In this instance, the department is not holding the submitted information in an employment context. Therefore, we conclude the department may not withhold any of the remaining information under section 552.102(a).

We note some of the remaining information is subject to section 552.130 of the Government Code.[1] Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the department must generally withhold the vehicle identification numbers ("VINs") we have marked and the license plate information we have indicated on the submitted video recording under section 552.130.[2] However, we note one of the VINs at issue may belong to one of the requestor's clients. The requestor has a right of access to her client's VIN pursuant to section 552.023 of the Government Code.

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

[2]We note 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).

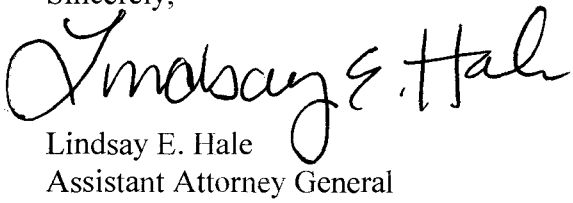
See id. § 552.023(a). Accordingly, if one of the VINs we have marked belongs to one of the requestor's clients, the department may not withhold the requestor's client's VIN under section 552.130.

In summary, the department must withhold the information we have indicated on the submitted recording under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked and indicated under section 552.130 of the Government Code; however, if one of the VINs we have marked belongs to one of the requestor's clients, the department must release the requestor's client's VIN. The department must release the remaining information.[3]

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, 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 504173

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[3]The information being released in this instance includes information that is confidential with respect to the general public. *See* Gov't Code § 552.023(a). Accordingly, if the department receives another request for this information from an individual other than this requestor or her client, the department must again seek a ruling from this office.