



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2014

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2014-17360

Dear Mr. Ohnemiller:

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# 537897 (City Attorney ID #14684).

The Midland Police Department (the "department") received a request for a specified offense report. You claim a portion of the submitted information is excepted from disclosure under section 552.1175 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

You seek to withhold the home phone number of a peace officer for the Stanton Police Department under section 552.1175 of the Government Code. Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Upon review, we find to the extent the officer at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must

¹Although you raise section 552.117 of the Government Code for the information of the peace officer at issue, we note section 552.1175 is the proper exception to raise for information held in a non-employment context.

withhold the officer's home phone number under section 552.1175 of the Government Code. If no election is made, the department may not withhold the officer's home phone number under section 552.1175 of the Government Code.

We note portions of the remaining information are subject to sections 552.101 and 552.130 of the Government Code.² Section 552.101 of the Government Code excepts "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 is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or 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(a). Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the officer at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the officer's home phone number under section 552.1175 of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in cursive script, appearing to read "Lee Seidlits", enclosed in a simple oval outline.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 537897

Enc. Submitted documents

c: Requestor
(w/o enclosures)